

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

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

**DECLARATION OF WILLIAM E. HOESE IN SUPPORT OF
KOHN, SWIFT & GRAF, P.C.'S APPLICATION FOR ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

I, William E. Hoese, declare as follows:

1. I am a shareholder of the law firm of Kohn, Swift & Graf, P.C. My firm has acted as counsel to Class Plaintiffs 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. Kohn, Swift & Graf, P.C.'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 precis of Kohn, Swift & Graf, P.C.'s qualifications and accomplishments.

6. During the period from the inception of the case through May 1, 2010, Kohn, Swift & Graf, P.C. performed 291.4 hours of work in connection with this litigation. The firm engaged in computer review and analysis of defendant documents, prepared document indexes, and forwarded the indexes and key documents to co-counsel.

7. The total lodestar amount for attorney/professional support staff time based on the firm's historic hourly rates is \$102,198.50. Attached hereto as Exhibit 2 is a schedule containing a detailed summary indicating amount of time – by category – spent by the shareholders, associates and other professional support staff of my firm 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 the services of its attorneys and other professionals in similar complex class action litigation and do not include charges for expense items, which are billed separately. The schedule was prepared from computer runs derived 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 an award of attorneys' fees or seeking reimbursement of costs.

8. All of the services performed by Kohn, Swift & Graf, P.C. 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 1, 2010, Kohn, Swift & Graf, P.C. incurred unreimbursed expenses in connection with the prosecution of this litigation in the sum of \$1,753.69. 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 Kohn, Swift & Graf, P.C. 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.


William E. Hoese

Exhibit 1

KOHN, SWIFT & GRAF, P.C.

Since its founding in 1969, the firm of Kohn, Swift & Graf, P.C., has been a national leader in the prosecution of antitrust class actions and other complex commercial litigation. Kohn, Swift & Graf, P.C. and its attorneys have been selected by courts and co-counsel to be lead counsel, or members of the executive committee of counsel, in scores of class actions throughout the country in the antitrust, securities fraud, tort and consumer protection fields.

Recently, the firm has been co-lead counsel in the Holocaust Era cases and other ground breaking international human rights litigation which have resulted in settlements totaling billions of dollars for plaintiff classes from Swiss banks and German and Austrian industries. The firm also maintains a general business litigation practice representing plaintiffs and defendants, including Fortune 500 and other publicly traded corporations, in state and federal courts.

The firm and its partners have been recognized for their excellence in antitrust and business litigation by numerous publications, including the Best Lawyers in America, Chambers USA America's Leading Business Lawyers and Pennsylvania Super Lawyers.

The Kohn firm has been a leader in the prosecution of antitrust class actions for the past 40 years. The firm has served as lead or co-lead counsel in the following antitrust class actions, among others: In re Automotive Refinishing Paint Antitrust Litigation, MDL No. 1426 (E.D. Pa.) (settlements totaling \$105.75 million); In re Compact Disc Minimum Advertised Price Antitrust Litigation, MDL No. 1361 (D. Me.) (settlements totaling \$143 million approved); In re Graphite Electrodes Antitrust Litigation, MDL No. 1244 (E.D. Pa.) (over \$133 million in settlements obtained for the class); In re Plastics Additives Antitrust Litigation, MDL No. 1684 (E.D. Pa.) (settlements of \$46 million with seven defendants; litigation continuing against other defendants); In re Stock Exchanges Options Antitrust Litigation, MDL No. 1283 (S.D.N.Y.) (settlements reached with over 40 defendants for \$44 million); In re Pillar Point Partners Antitrust Litigation, MDL No. 1202 (D. Arizona) (settlements of \$50 million); In re Amino Acid Lysine Antitrust Litigation, 918 F.Supp. 1190 (N.D. Ill. 1996) (settlements in excess of \$50 million); In re Toys "R" Us, Inc., Antitrust Litigation, MDL 1211 (E.D.N.Y.) (\$55 million settlement value); In re Residential Doors Antitrust Litigation, MDL 1039 (E.D. Pa.) (\$18 million in settlements); In re Chlorine and Caustic Soda Antitrust Litigation, 116 F.R.D. 622 (E.D. Pa. 1987) (settled on eve of trial for \$51 million); Cumberland Farms, Inc. v. Browning Ferris Indus., Inc., 120 F.R.D. 642 (E.D. Pa. 1988) (class action alleging price fixing in waste hauling industry-case settled shortly before trial for \$50 million); In re Plywood Antitrust Litigation, MDL 159, (D. La.) (tried to verdict for plaintiffs; affirmed by Fifth Circuit; total settlements of approximately \$173 million).

In addition, the Kohn firm is and has been a member of a steering committee or executive committee of counsel in dozens of antitrust class actions, including: In re Currency Conversion Fee Antitrust Litigation, (S.D.N.Y.); In re Carbon Fiber Antitrust Litigation (C.D. Cal.); In re Extruded Graphite Antitrust Litigation (D.N.J.); In re Linerboard Antitrust Litigation (E.D. Pa.); In re Relafen Antitrust Litigation (D. Mass.); In re Brand Name Prescription Drugs Antitrust Litigation (N.D. Ill.); In re Commercial Explosives Antitrust Litigation (D. Utah); In re Catfish Antitrust Litigation (N.D. Miss.); In re Commercial Paper Antitrust Litigation (M.D. Fla.); In re Glassine and Greasproof Paper Antitrust Litigation (E.D. Pa.); In re Corrugated Container

Antitrust Litigation, (S.D. Tex.); In re Sugar Industry Antitrust Litigation (E.D. Pa.).

The Kohn firm also has maintained a business litigation practice and represented private clients as plaintiffs in antitrust cases where it was the sole counsel, or assisted by a few co-counsel. These cases were hard fought and several have proceeded through trial and appeals: Alvord-Polk, Inc. v. F. Schumacher & Co., 37 F.3d 996 (3d Cir. 1994), cert. denied, 514 U.S. 1063 (1995) (summary judgment in favor of defendants reversed by Third Circuit; certiorari denied by the Supreme Court; case tried to conclusion before a jury and settled after trial); Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp., 995 F.2d 425 (3d Cir. 1993) (jury verdict in favor of plaintiff; case settled); Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993) (summary judgment in favor of defendant reversed by Third Circuit; case settled prior to trial).

In addition to its antitrust practice, the Kohn firm has been retained by pension funds, including several multi-billion dollar funds, to monitor the fund's investments and to commence litigation when appropriate. The firm has brought litigation on behalf of the Retirement System of the City of Philadelphia, the Police and Fire Retirement System of the City of Detroit and has been lead or co-lead counsel in the following securities class actions among others: In re KLA-Tencor Corp. Securities Litigation, Master File No. 06-cv-04065-MJJ, (N.D. Cal); In re Marvell Technology Group, Ltd. Securities Litigation, Master File No. 06-06286-RMW (N.D. Cal.); The Police and Fire Retirement System of the City of Detroit v. The Bear Stearns Companies, Inc., et al., Civil Action No. 3638-VCP (Del. Chancery); In re Calpine Corporation Securities Litigation, Master File No. C-02-1200 (N.D. Cal); In re Schulman Partnerships Securities Litigation, MDL 753-AAH (C.D. Ca.); Goldenberg, et al. v. Marriott PLP Corp., et al., No. PJM 95-3461 (D. Md.); In re Intelligent Electronics, Inc. Securities Litigation, Master File No. 92-CV-1905 (E.D. Pa.); WEBBCO v. Tele-Communications, Inc., et al., No. 94-WM-2254 (D. Colo.); The Carter Revocable Trust v. Tele-Communications, Inc., et al., No. 94-WM-2253 (D. Colo.); Rabin v. Concord Assets Group, Inc., et al., 89 Civ. 6130 (LBS) (S.D.N.Y.); Sadler v. Stonehenge Capital Corp., et al., 89 Civ. 6512 (KC); Ramos, et al. v. Patrician Equities Corp., et al., 89 Civ. 5370 (TPG) (S.D.N.Y.); In re Advacare Securities Litigation, (E.D. Pa. 1993); Solo, et al. v. Duval County Housing Finance Authority, et al., No. 94-1952-CA (Duval Cty. Fla.); In re Clinton Oil Securities Litigation, (D. Kan. 1982).

The firm also has litigated numerous consumer and mass tort class actions, such as: In re Synthroid Marketing Litigation, MDL No. 1182 (N.D. Ill.); In re Temporomandibular Joint (TMJ) Implants Products Liability Litigation, MDL No. 1001 (D. Minn.); In re Bolar Pharmaceutical Co., Inc. Generic Drug Consumer Litigation, MDL No. 849 (E.D.Pa.); In re General Motors Corporation Pickup Truck Fuel Tank Products Liability Litigation, MDL No. 961 and Master File No. 92-6450 (E.D.Pa.); In re Factor VIII or Factor IX Concentrate Blood Products Litigation, Civil Action No. 93-5969 and MDL No. 986 (N.D.Ill.); In re Copley Pharmaceutical, Inc., "Albuterol" Products Liability Litigation, MDL Docket No. 94-140-1013 (D. Wyo.).

Courts throughout the country have praised the firm's ability to handle complex class litigation:

In re Automotive Refinishing Paint Antitrust Litigation, MDL No. 1426 (E.D. Pa.). Judge Surrick stated: "I want to commend counsel on both sides of this litigation. I think the representation on both sides of this litigation is as good as I've ever seen in my entire professional career," transcript of hearing, August 9, 2007, pp. 18-19.

In re Graphite Electrodes Antitrust Litigation, Master File No. 97-CV-4182, MDL No. 1244 (E.D. Pa.). Judge Weiner wrote that "[c]lass counsel exhibited the highest level of skill and professionalism in their conduct of this litigation." Order of September 8, 2003.

In re Compact Disc Minimum Advertising Price Antitrust Litigation, MDL No. 1361 (D. Me.). In selecting the firm as lead counsel, Judge Hornby stated that "I have concluded that the firm Kohn, Swift & Graf has the experience, skill, resources, and expertise best able to move this matter forward, and I hereby designate that firm as lead counsel." Order of January 26, 2001, p. 2.

In re Amino Acid Lysine Antitrust Litigation, MDL No. 1083 (N.D. Ill.). After selecting Kohn Swift as sole lead counsel, at the conclusion of the case Judge Shadur praised the firm's "extraordinarily professional handling" of the matter, which justified the selection of the firm *ab initio*. Transcript of hearing, February 27, 1998, pp. 3 & 4.

In re: Rio Hair Naturalizer Products Liability Litigation, MDL 1055 (E.D. Mich.). Judge Rosen stated that "the work of [lead counsel] and the manner in which they conducted themselves exhibited the very highest level of professionalism and competence in our legal system." 1996 U.S. Dist. LEXIS 20440, *57 (E.D. Mich., December 20, 1996).

In re: Montgomery Ward Catalog Sales Litigation, Master File No. 85-5094, MDL No. 685 (E.D. Pa.). Judge Green praised "the efficient and excellent quality of the attorneys' work." Memorandum and Order, August 24, 1988.

Exhibit 2

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: Kohn, Swift & Graf, P.C.
Reporting Period: Inception through May 1, 2010

Categories:

- | | |
|--|--|
| (1) Factual Investigation
(2) Discovery
(3) Pleadings, Briefs & Pretrial Motions
(4) Court Appearances
(5) Draft Initial or Amended Complaint
(6) Client/Shareholder Communications | (7) Litigation Strategy & Analysis
(8) Settlement Negotiations, Stipulation, Plan of Allocation |
|--|--|

Name	1	2	3	4	5	6	7	8	Total Hours	Rates	Total Lodestar
William E. Hoese	S	13.0	6.1					.6	19.7	\$500-550	\$9,915.00
Elkan M. Katz	A	237.3							237.3	\$335-375	\$82,823.50
Jarad G. Solomon	A	34.4							34.4	\$275	\$9,460.00
TOTAL:		284.7	6.1					.6	291.4		\$102,198.50

(S) Shareholder
 (A) Associate

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.)

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DESCRIPTION	TOTAL EXPENSES
In-House Photocopying	\$757.60
Postage/Express Mail/Messenger	92.04
Long Distance Telephone/Facsimile	13.05
Encore monthly computer fees	891.00
TOTALS	\$1,753.69