

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

RONALD TUSSEY, <i>et al.</i> ,)	
)	
Plaintiffs;)	
)	
v.)	Case No. 06-04305-CV-C-NKL
)	
ABB, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**DECLARATION OF HEATHER LEA IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEY FEES**

I, Heather Lea, for my declaration pursuant to 28 U.S.C. §1746 in the above-referenced action, state the following:

1. I make this declaration based upon my personal knowledge of the facts discussed in this declaration related to Plaintiffs’ non-taxable or out-of-pocket costs, and if called as a witness, I can competently testify to the facts stated herein.

2. I am an attorney for Schlichter, Bogard and Denton LLP (SBD), class counsel for Plaintiffs in the above-referenced matter. I have been actively involved in this litigation and I am familiar with all aspects of this proceeding.

3. I am licensed to practice in all Courts in the States of Illinois and Missouri.

4. The non-taxable costs Plaintiffs are seeking in their Motion for Attorney Fees are described herein and are itemized in Exhibits Nos. 1–12 filed herewith. These itemizations are summaries of invoices that total thousands of pages and are too voluminous to be conveniently examined in court or delivered to Defendants economically. Any and all of the invoices will be provided upon request.

5. **Copies: \$108,098.17, Exhibit 1.** Exhibit 1 identifies a total of \$108,098.17 in charges that SBD paid for copies of case-related materials and printed copies of documents made in-house and by Plaintiffs' third-party vendor (XACT Data Discovery) for use by attorneys, clients and experts. *See also* Decl. of Sheri O'Gorman ¶2. Included within this category are copies of exhibits to be used during a witness's deposition, as well as copies of materials to be included in attorney binders for depositions, hearings, trial or other related matters. Further, copies made by XACT for use in this case are often referred to as "Blow Back" on Exhibit 1, and include copies of documents produced during litigation to aid Plaintiffs' attorneys' review. Also included in this total are copies (and large volume printing of electronic documents) done at SBD for which SBD customarily charges clients at a rate of \$0.25 per page. O'Gorman Decl. ¶ 9.

6. **Delivery Charges: \$15,227.16, Exhibit 2.** Exhibit 2 identifies expenses that SBD paid for courier, in-house postage and FedEx deliveries, which are reasonable out-of-pocket costs customarily charged to fee-paying clients. These expenses were incurred for sending pleadings or other materials to the Court and staff, exhibit copies to Plaintiffs' attorneys for use at deposition, documents to Plaintiffs' experts for review and analysis, and materials to Defendants' attorneys, third-parties, and named Plaintiffs. The delivery charges also encompass courier charges for sending documents to Plaintiffs' and Defendants' attorneys.

7. **Deposition-Related Expenses (Non-Taxable): \$93,324.02, Exhibit 3.** SBD paid a total of \$93,324.02 for deposition-related costs. These expenses include costs incurred for Plaintiffs' counsel to attend depositions, including travel (airfare, luggage fees, parking and taxi fare) and lodging (hotel rooms and internet charges).¹ Attorney travel expenses are reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee paying client.

¹ Internet charges were incurred to allow Plaintiffs' counsel to access email, locate documents online for use at the deposition or conduct research regarding deposition-related issues.

O’Gorman Decl. ¶11. Depositions (other than those that occurred at SBD in St. Louis, MO) occurred at locations far removed from SBD’s office, thus requiring Plaintiffs’ attorneys to stay overnight.² Further, Plaintiffs Pinnell, Tussey and Fisher had to travel to St. Louis the day or night before their depositions requested by Defendants to be adequately prepared. Each of the these Plaintiffs lived at locations in Missouri (*i.e.*, Jefferson City, Lake of the Ozarks and Argyle) that were too far for each witness to reasonably commute to and from SBD’s office on the day of the deposition.

8. Also included in this category of expenses are those charges by the court reporter that were not included on Plaintiffs’ Bill of Costs because they are not taxable under 28 U.S.C §1920, such as expenses for scanning/photocopying exhibits used at a deposition, Ascii CD (*i.e.*, format of transcript on CD sent to Plaintiffs), postage and handling, condensed deposition transcripts, surcharges for video deposition, archiving fees (*i.e.*, fee to archive transcript for a period of time), expedited processing (*i.e.*, 6-day turnaround), word indexes of the transcript, and Real-Time feed of the testimony. The video depositions of Defendants’ fact witnesses, Defendants’ experts and a third-party witness (Kathleen Labonte of Mercer) were necessary to be used at trial. *See, e.g.*, Plaintiffs’ Deposition Clips (PDC) (identifying those deposition clips played at trial). These expenses were necessary for Plaintiffs’ attorneys to make full and effective use of these transcripts and prepare for trial and are customarily charged to clients by SBD. O’Gorman Decl. ¶14.

9. **Electronic Discovery: \$57,585.70, Exhibit 4.** SBD incurred a total of \$57,585.70 in electronic discovery charges. *See also* O’Gorman Decl. ¶2. This encompasses expenses incurred for XACT (Plaintiffs’ third-party vendor) to electronically bates-stamp documents produced

² Depositions of Defendants’ fact witnesses and their experts occurred in Boston, MA and New York, NY.

during litigation, code documents (*i.e.*, processing documents to include data for various metadata fields, such as date, document type, author, recipient, etc.), scan documents, and burn CDs for use by attorneys and Plaintiffs' experts. With respect to the necessity to burn CDs, Defendants produced responsive documents in single-page TIFF format, which required Plaintiffs to convert those images to pdf format, OCR the pdfs (*i.e.*, render the document text searchable), and burn those pdfs onto a CD for later use by Plaintiffs' attorneys and experts. Further, XACT burned CDs of Plaintiffs' documents for production to Defendants.

10. Also included are expenses incurred for XACT to load documents produced during litigation onto the Concordance database for subsequent attorney review. SBD paid XACT to store or host the electronic documents on its database, as well as Concordance licensing fees to permit Plaintiffs' attorneys to access and review the documents on the database. *See* O'Gorman Declaration ¶¶4–8 (describing services performed by XACT and how the Concordance licensing fees were allocated to the *Tussey* case). Maintaining these documents in this electronic format was reasonable and necessary because it allowed searching and aggregation by Plaintiffs' attorneys that was much more efficient in time and costs than storing all of these documents in paper format.

11. **Mediation: \$392.25, Exhibit 5.** SBD paid \$392.25 in expenses to attend the two court-ordered mediations with Judge Knox. *See* Docs. 134, 431, 442 (two court-ordered mediations). These expenses refer to amounts spent on gas, hotel accommodations and conference calls with Judge Knox and opposing counsel, which are expenses that SBD customarily charges to its clients. *See* O'Gorman Decl. ¶¶11–12.

12. **Phone: \$3,391.76, Exhibit 6.** SBD paid \$3,391.76 for phone calls related to this litigation. SPD paid Intercall for conference calls with opposing counsel and the Court, which

were necessary for Plaintiffs' attorneys' representation of the class. SBD also paid Intercall for conference calls between Plaintiffs' attorneys who were in different locations. These conference calls between Plaintiffs' attorneys were necessary to promote the exchange of different perspectives related to a given issue or litigation strategy. These charges are normally billed to clients. Plaintiffs also made long-distance phone calls in-house for case-related matters. SBD's in-house rate for these calls is \$0.40 per minute. O'Gorman Decl. ¶12. SBD customarily charges its clients for these expenses. *Id.*

13. **Printing Services: \$241.01, Exhibit 7.** SBD paid \$241.01 for services provided by XACT) for binding documents and inserting index tabs to facilitate Plaintiffs' attorneys' review of documents and organization of key documents or pleadings related to this matter. *See* Exhibit 7 ("Binding GBC" and "Supplies Index Tabs"). These costs represent reasonable litigation expenses incurred during this case. O'Gorman Decl. ¶11.

14. **Private Process Server: \$1,696.70, Exhibit 8.** SBD paid \$1,696.70 to private process servers for serving Plaintiffs' summons on Defendants and subpoenas on third-parties (investment management firms and Mercer HR Consulting). These third-parties provided necessary discovery related to Plaintiffs' allegations concerning Defendants' improper management and administration of the PRISM Plans. These process server costs are reasonable litigation expenses customarily charged to fee-paying clients.

15. **Research (Non-Computer Assisted Legal Research): \$12,331.10, Exhibit 9.** SBD paid \$12,331.10 with respect to costs incurred for searching for and/or obtaining material related to Plaintiffs' allegations in this case. SBD paid PACER for obtaining court filings in this case or other matters addressing pending issues before this Court. PACER costs are reasonable out-of-pocket costs. SBD also paid Judy Diamond Associates, Inc. to obtain Form 5500s filed with the

Department of Labor regarding the PRISM Plans and other related plans or master trusts. These Form 5500s provided necessary data of the PRISM Plans, including participant counts, assets, investment lineup, disclosed expenses, service providers and other information regarding the administration and management of the Plans. These Form 5500s were not available on any free website and paying Judy Diamond Associates, Inc. to obtain these documents was more efficient than Plaintiffs' attorneys travelling to Washington D.C. to obtain them directly from the DOL. This type of investigatory research is normally charged to a client.

16. **Trial Expenses \$56,790.91, Exhibit 10.** SBD paid \$56,790.91 in trial-related expenses. These expenses consist of lodging for Plaintiffs' counsel, staff and the testifying named Plaintiffs immediately prior to and/or during the trial. Plaintiffs also paid for their attorneys and staff to travel between St. Louis and Kansas City, MO, and between their hotel and the courthouse. These transportation expenses included those for air fare, taxi fare, mileage, rental vehicle, parking and shuttle service, and constitute reasonable expenses because travel costs are ordinarily charged to a fee-paying client. O'Gorman Decl. ¶11. Expenses were also incurred for the rental of a truck to transport Plaintiffs' counsel's trial-related materials (*e.g.*, over one-hundred boxes of documents, office supplies and computer equipment) from St. Louis to Kansas City. Plaintiffs also rented a truck and hired a moving company to transport those materials back to St. Louis. Further, Plaintiffs incurred costs for rental of a vehicle and fuel to attend a meeting with the Courtroom Deputy prior to trial to discuss the technology capabilities of the courtroom. *See Exhibit 10 (e.g., "Vehicle Rental for Technology Meeting").*

17. SBD also paid for rental of equipment used during trial (*e.g.*, printer, table and table cloth), and for installation and removal of the printers. SBD also paid for office supplies used during trial, and charges for printing supplies used to organize the printed exhibit copies (*e.g.*,

binders, folders and redwelds). SBD also paid a consultant (Gore & Perry Reporting & Video) for guidance when using Plaintiffs' trial exhibit software immediately prior to trial. SBD paid to synchronize the text and video of depositions to be used at trial, many of which were played. *See* Plaintiffs' Deposition Clips (PDC). Finally, SBD paid for loading Plaintiffs' trial exhibits on Defendants' exhibit software (*i.e.*, data and tiff export preparation). All trial-related expenses are customarily charged to SBD's clients. O'Gorman Decl. ¶11.

18. **Computer Assisted Legal Research (Westlaw): \$20,146.12, Exhibit 11.** Electronic research costs from Westlaw are typically charged to clients. SBD pays Westlaw for access to its research services. O'Gorman Decl. ¶13. The flat rate paid to Westlaw is allocated among all cases based on the amount of that time each case spent using the database, as determined by Westlaw. *Id.* These expenses are then charged to SBD clients. *Id.* Westlaw research was necessary to allow Plaintiffs to research for controlling or persuasive authority related to Plaintiffs' fiduciary breach allegations and other legal issues that arose during the course of the litigation, such as discovery disputes, class certification, dispositive motion practice and post-trial briefing and provides a much more time and expense efficient manner for obtaining that research than attorneys searching books in libraries.

19. **Expert Witness Fees: \$1,694,794.85, Exhibit 12.** Expert witness fees incurred are normally charged to clients. O'Gorman Decl. ¶10. SBD paid fees and expenses to testifying experts to provide necessary expert opinions bearing on issues central to this case, as well as to confidential non-testifying consulting experts³ to provide key insight and expertise into revenue sharing practices, reviewing and analyzing document production, and advising on case theories. *See* Declaration of Troy Doles in Support of Plaintiffs' Motion for Attorney Fees ¶¶14, 34, 163–

³ Because of the confidential nature of these non-testifying experts, Plaintiffs have redacted the identity of these individuals from their itemized billing entries.

169. Plaintiffs' disclosed experts, including their affiliated company as identified on Exhibit 12, were: Al Otto (Rosewood Ventures, and later One Fiduciary Group, LLC); Ross Miller (Miller Risk Advisors); Dr. Steve Pomerantz (Steve Pomerantz, LLC); Edward O'Neal (Securities Litigation and Consulting Group, Inc.); Paul Kampner (TMark Associates, Ltd.); and David Witz (Fiduciary Risk Assessment, LLC).

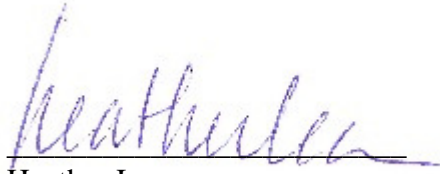
20. Each of these experts charged for, and SBD paid, travel, lodging, meals and incidental expenses in the course of performing their work and testifying in deposition or at trial. Excluded from the testifying experts charges in Exhibit 12 are the taxable costs for these experts that Plaintiffs have included in the Bill of Costs.

21. A summary of the above referenced costs is provided below:

Exhibit 1 - Copies	\$ 108,098.17
Exhibit 2 - Delivery Charges	\$ 15,227.16
Exhibit 3 - Deposition-Related Exp.	\$ 93,324.02
Exhibit 4 - Electronic Discovery	\$ 57,585.70
Exhibit 5 - Mediation	\$ 392.25
Exhibit 6 - Phone	\$ 3,391.76
Exhibit 7 - Printing Services	\$ 241.01
Exhibit 8 - Private Process Server	\$ 1,696.70
Exhibit 9 - Research	\$ 12,331.10
Exhibit 10 - Trial Expenses	\$ 56,790.91
Costs To Be Shifted to Defendants	\$ 349,078.78
Exhibit 11 - Comp. Asst. Legal Res.	\$ 20,146.12
Exhibit 12 - Expert Witness Fees	\$ 1,694,794.85
Total Nontaxable Costs	\$ 2,064,019.75
Bill of Costs	\$ 104,791.44
Grand Total	\$ 2,168,811.19

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 11, 2012 at St. Louis, MO.

A handwritten signature in blue ink that reads "Heather Lea". The signature is written in a cursive style with a horizontal line at the end.

Heather Lea