

**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 MARK G. BOYKO

I, Mark G. Boyko, under penalty of perjury pursuant to 28 U.S.C. §1746, declare as follows:

1. I am an attorney with the law firm of Schlichter, Bogard & Denton LLP, counsel for the Plaintiffs. This declaration is submitted in support of Plaintiffs' Motion for Attorney Fees and Memorandum in Support. I am familiar with the facts set forth below and able to testify to them.

2. In other class actions, Courts have approved 2009 billing rates for Schlichter, Bogard & Denton class action attorneys. Specifically, in the Missouri case of *Eshelman v. Client Services, Inc.*, No. 0822-CC-00763 (22d Cir. Mo.) (Order Granting Attorneys' Fees and Costs, Dec. 8, 2009) (attached hereto as Exhibit 1), the Court approved hourly rates for Class Counsel with 25 years or more experience of \$800 per hour; for attorneys with 15-24 years of experience it was \$625 per hour; for attorneys with 5-15 years of experience it was \$450 per hour; for attorneys with 2-4 years of experience it was \$325 per hour; and for professional support staff the rate was \$125 per hour. *Id.* at 8 (approving rates); *Eshelman*, Motion for Attorneys' Fees and Costs, at 13 (Dec. 7, 2009) (requesting rates) (attached hereto as Exhibit 2). In *Martin v. Caterpillar*, a 401(k) excessive fee case handled by Schlichter, Bogard & Denton, the Honorable

Judge Joe Billy McDade accepted the same hourly rates, which in that case produced a blended hourly attorney rate of \$514.60 and a lodestar multiplier of 1.4. *Martin v. Caterpillar*, No. 07-1009, Doc. 197, at 8 (C.D.Ill. Sept. 10, 2010) (McDade, J.). Those rates were later found reasonable by the Honorable Judge Patrick Murphy in another 401(k) excessive fee case, *Will v. General Dynamics*, 2010 WL 4818174 (S.D.Ill. Nov. 22, 2010) (Murphy, J.).

3. Accordingly to the National Law Journal, average billing rates for Top 250 firms increased by 2.7% in 2010 and 4.4% in 2011. According to Mark Medice, Director of the Hildebrandt Institute's Peer Monitor Index, rates were expected to increase between 3 and 3.5% in 2012. These surveys indicate a cumulative increase in fees between 2009 and 2012 of 10.7% based on a midpoint, 3.25% increase in 2012.

4. Based on these market increases, the fees found reasonable for Class Counsel's services in 2009 updated for 2012 are as follows:

- a. A1 — Attorneys with 25 years or more experience — \$885.60/hr.
- b. A2 — Attorneys with 15–24 years of experience — \$691.88/hr.
- c. A3 — Attorneys with 5–14 years of experience — \$498.15/hr.
- d. A4 — Attorneys with 2–4 years of experience — \$359.78/hr.
- e. Legal Assistants — \$138.38/hr.

5. A list of all Schlichter, Bogard & Denton attorneys who put in time on this matter, along with their rates, is attached as Exhibit 3. A summary of the qualifications and background of each attorney is attached as Exhibit 4.

6. In complex, national, litigation such as this, paralegals and law clerks have billed hourly rates around \$275. For example, Lief, Cabraser, Heimann & Bernstein states that their paralegals are billed at rates as high as \$370 per hour. *See, Brazil v. Dell Inc.*, Case No. 07-01700

(N.D.Cal.) Doc. 320-1, at 13 (Sept. 8, 2011) (requesting rates); *Brazil*, 2012 WL1144303 (N.D.Cal. April 4, 2012) (approving requested fee). Loeff, Cabraser also states that its law clerks were billed in 2011 at rates between \$230 and \$270. *Id.* at Doc. 320-1, at 13. In *In re Philadelphia Newspapers*, O'Melveny & Myers LLP, which is representing Fidelity herein, billed its paraprofessionals at rates between \$260 and \$335 per hour. *See, In re Philadelphia Newspapers*, LLC, Case No. 09-11204, Doc. 1444, at 3 (Nov. 18, 2009).

7. In 2009, O'Melveny & Myers declared that "the normal rates" charged for the time of various attorneys in a bankruptcy matter were \$810–\$860 per hour for partners. *In re Philadelphia Newspapers, LLC*, 09-11204, Doc. 1444 at 2 (Bnkr. E.D.Penn. Nov. 18, 2009). Associate rates ranged from \$425 to \$480 and paralegal rates ranged between \$260 and \$335. *Id.* This is consistent with a Westlaw CourtExpress Legal Billing Report from May, 2009 showing O'Melveny billing an attorney with 34 years of experience at \$860 per hour and associates with two and three years of experience at \$330 and \$395 respectively. *Hunt v. Imperial Merchant Services*, 05-04993, Doc. 188 at 1–3 (N.D.Cal. Aug. 31, 2010). Elsewhere, rates at O'Melveny & Myers in 2009 have been reported as \$860–\$950 for attorneys with 36 and 37 years of experience, \$700–\$820 for attorneys between 16 and 21 years of experience, \$480 to \$675 for attorneys with between 5 and 14 years of experience, and \$395 to \$450 for attorneys with 2 to 4 years of experience. *Id.* at 14. Paralegals reportedly ranged from \$225 to \$310. *Id.* Again, these were 2009 rates. Updating those rates based on the legal market's 10.7% cumulative average increase based on the surveys identified above, would yield rates of \$952–\$1051 for attorneys with 26 and 37 years of experience, \$775–\$908 for attorneys between 16 and 21 years of experience, \$531–\$747 for attorneys with between 5 and 14 years of experience, and \$437–\$498 for attorneys with 2 to 4 years of experience. The paralegal range would increase to \$249–\$343.

8. Morgan Lewis's "hourly rates are set at a level designed to compensate it fairly for the work of its attorneys and paraprofessionals and to cover fixed and routine overhead expenses." *In re AMR Corp.*, 11-15463, Doc. 590 at 9 (Bnkr. S.D.N.Y. Jan. 10, 2012). In 2011, Morgan Lewis' hourly billing rates reached \$900 for senior partners. *Id.* Counsel rates ranged from \$460 to \$505, Associate rates were from \$255 to \$495 and Legal Assistant rates were from \$128 to \$270. *Id.* Other large national firms claim billing rates that are even higher. *See, e.g., In re Los Angeles Dodgers LLC*, Case No. 11-12010 Doc. 884 at 8 (Bnkr. D. Del. Dec. 1, 2011) ("As of January 1, 2012, Covington's billing rates applicable to this matter will range from \$280 per hour to \$965 per hour, depending upon the seniority and expertise of the attorney involved. The billing rates applicable to the lead attorney for this matter will be \$855 per hour. Paralegal and other, non-attorney professional time will be billed at rates from \$200 per hour to \$360 per hour.").

9. All of the named plaintiffs who testified at trial prepared for their testimony and were questioned by Defendants' counsel. Mr. Fisher, Mr. Tussey, and Mr. Pinnell have been active, hands-on participants in this litigation, expending significant amounts of their time to benefit the Class. They initiated this action at substantial risk. They responded to document requests and interrogatories; reviewed pleadings; assisted with discovery; and attended depositions and trial.

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

Executed on May 11, 2012.

SCHLICHTER, BOGARD & DENTON



Mark G. Boyko