

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE INITIAL PUBLIC OFFERING
SECURITIES LITIGATION

This Document Relates To:
ALL CASES

x
Civil Action No. 21 MC 92 (SAS)
x

**DECLARATION OF NEIL FRASER SUPPORT OF PLAINTIFFS' EXECUTIVE
COMMITTEE'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES FOR PLAINTIFFS' COUNSEL AND AN AWARD
OF COSTS AND EXPENSES TO REPRESENTATIVE PARTIES**

I, Neil Fraser, declare and state as follows:

1. I am a partner in the law firm Milberg LLP (the "firm" or "Milberg") and a member of the Bar and this Court. I submit this declaration in support of Plaintiffs' Executive Committee's Application for an Award of Attorneys' Fees, Reimbursement of Expenses For Plaintiffs' Counsel and an Award of Costs and Expenses to Representative Parties.

2. Attached as Exhibit 1 is a true and correct copy of excerpts from the Transcript of the Fairness Hearing in *In re Tyco Int'l Ltd. Securities Litigation*, No. 02-md-1335 (D.N.H. Nov. 2, 2007), pages 101 - 104.

3. Attached as Exhibit 2 is a true and correct copy of the docket listing all counsel in *Schwartz v. Citibank (S.D.) N.S.*, No. 00-75 (C.D. Cal.).

4. Attached as Exhibit 3 is a true and correct copy of excerpts from the Hearing Transcript of the Government's Request for Dismissal of the First and Second Superseding Indictments, *U.S. v. Milberg, Weiss, Bershad & Schulman, LLP*, No. CD 05-587(A) (C.D. Cal. July 14, 2008).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 25th day of August, 2009 in New York, New York.



Neil Fraser

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

IN RE: *
 TYCO INTERNATIONAL, LTD. * No. C.02-MD-1335-B
 * November 2, 2007
 * 10:40 a.m.
 Multidistrict Securities *
 Litigation *
 * * * * *

TRANSCRIPT OF FAIRNESS HEARING
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For Securities
Plaintiffs:

Richard S. Schiffrin, Esq.
David Kessler, Esq.
Katharine M. Ryan, Esq.
Michael K. Yarnoff, Esq.
Darren J. Check, Esq.
Schiffrin, Barroway, Topaz &
Kessler, LLP

Jay W. Eisenhofer, Esq.
Sidney S. Liebesman, Esq.
Geoffrey C. Jarvis, Esq.
Grant & Eisenhofer, P.A.

Leigh Smith, Esq.
Sanford Dumain, Esq.
Milberg, Weiss, Bershad, Hynes &
Lerach, LLP

Bart M. Schwartz, Esq.

Louis P. Malone, Esq.
O'Donoghue & O'Donoghue

Cindy Rougeou, Esq.

William L. Chapman, Esq.
Orr & Reno, P.A.

1 representatives here. As you continue in this business,
2 I would ask you to think about at the outset doing
3 something like what was done in the WorldCom case where
4 there were a not greater than a percentage of fund or a
5 lodestar multiplier. And you might be able to do that
6 in a case like this, and with the benefit of hindsight,
7 I think I would have considered doing something like
8 that here.

9 So I agree with you in part.

10 MR. MURPHY: Let me go back to what you were
11 talking about before, your Honor, which I think is
12 exactly right, and this is what U.S. Trust is arguing
13 about. How much of an incentive do you have to get
14 people to do this kind of work, and that's where U.S.
15 Trust is suggesting they have concerns over the
16 reasonableness of that incentive. It isn't over the
17 lodestar. It isn't over any particular percentage.
18 It's how much of a reward above and beyond the lodestar
19 are people going to get. And you mentioned it
20 earlier --

21 THE COURT: What's the lodestar in this case,
22 Mr. Schiffrin?

23 MR. SCHIFFRIN: 172 million.

24 THE COURT: What's the percentage basis? The
25 multiplier?

1 MR. SCHIFFRIN: 2.7.

2 THE COURT: He thinks 2.7 is too high.

3 MR. MURPHY: I think the number 2.7 generates
4 is too high, your Honor. I mean, if you look at the
5 amount over the lodestar --

6 THE COURT: That's really an argument for lay
7 people. You know, the number is too big. It's
8 outrageous. Well, that's not a basis to do assessment.
9 You have to do assessment based on the component parts
10 that lead you to the number.

11 MR. MURPHY: I appreciate everything you just
12 said, your Honor. But U.S. Trust's objection is simply
13 this. When you are trying to determine whether the
14 percentage of fund is a reasonable number, you have to
15 look at the numbers that it generates, and whether
16 that's a lay argument that they are making or not, when
17 you look at the amount over the lodestar in this table
18 of 16 cases --

19 THE COURT: Let me give you an example. The
20 effect of it is if there's a 300-million-dollar jackpot
21 in the Power Ball, that someone would invest 299 million
22 in the hope of winning 300 million. They wouldn't.
23 Everybody would risk a buck, two bucks, a hundred bucks,
24 a thousand bucks maybe, but you'd find very few people
25 that are willing to risk hundreds of millions of dollars

1 in the hope of winning a 300-million-dollar jackpot. So
2 the amount that they have to invest to get the potential
3 return and the risk that they face are the factors that
4 one has to take into account. Not the total recovery.
5 That it's 300 million or 500 million or a billion is
6 irrelevant without knowing what are the risks and costs.

7 MR. MURPHY: And the risks and costs are
8 rewarded by the multiplier or by the percentage over the
9 actual cost. Wouldn't we agree on that?

10 THE COURT: Yes. And two point whatever they
11 are asking is half of -- roughly half of what the
12 WorldCom multiplier was. It's roughly a third of the
13 cedent multiplier. It's half of the Nortel II
14 multiplier. So from that perspective you should be
15 happy. They are using a much lower multiplier than was
16 used in the higher cases.

17 MR. MURPHY: Except when you do the math, your
18 Honor, the WorldCom bonus was 253 million. They are
19 asking for 290 million here.

20 THE COURT: I think we are going round and
21 round. I guess where we disagree is you think we should
22 just take the absolute number and make a judgment about
23 it, and I think that's not what the case law asks me to
24 do.

25 MR. MURPHY: Well, your Honor, what the case

1 law asks you to do is to compare it to comparable cases.
2 What U.S. Trust is saying to you is that when you look
3 at the cases that are over a billion dollars -- we'll
4 throw in the McKesson case which was just under a
5 billion dollars. And you lump those up and you go from
6 there, their average fee percentage is 6.22 percent as
7 compared to what's being asked for here.

8 THE COURT: And they settled at class cert.,
9 merits discovery, class cert., class cert., class cert.
10 This case settled after almost the completion of
11 discovery in this case, five years into the litigation.
12 A relevant factor in your view?

13 MR. MURPHY: Absolutely, your Honor. It is a
14 relevant factor, and we're not quibbling with that
15 factor at all. This case went the distance and that's
16 why it ought to be a percentage of fund recovery that
17 they make. The question becomes what is the reasonable
18 percentage of fund recovery.

19 THE COURT: Ten percent would not be too high?

20 MR. MURPHY: U.S. Trust doesn't suggest a
21 specific recovery, your Honor. The average of these is
22 6.22, but they range up to 12 percent.

23 THE COURT: If I gave them 6.2, what would be
24 the recovery?

25 MR. MURPHY: I got out of math in the junior



(JWJx), CLOSED

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division – Los Angeles)
CIVIL DOCKET FOR CASE #: 2:00-cv-00075-LGB-JWJ**

Elliot Schwartz, et al v. Citibank (SD) N A, et al
Assigned to: Judge Lourdes G. Baird
Referred to: Magistrate Judge Jeffrey W. Johnson
Demand: \$0
Case in other court: LA Cty Sup Crt, BC222172
Cause: 28:1441 Notice of Removal

Date Filed: 01/04/2000
Date Terminated: 10/16/2000
Jury Demand: Defendant
Nature of Suit: 430 Banks and Banking
Jurisdiction: Federal Question

Plaintiff

Elliot Schwartz
*an individual, on behalf of himself and all
other similarly situated*

represented by **Barry Leonard Kramer**
Barry Leonard Kramer Law Offices
11111 Santa Monica Boulevard, Suite 1860
Los Angeles , CA 90025-3352
310-235-9980
Email: kramerlaw@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley E Beckworth
Nix Patterson &Roach
205 Linda Dr
Daingerfield , TX 75638
903-645-7333
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian R Strange
Strange &Carpenter
12100 Wilshire Boulevard
19th Fl
Los Angeles , CA 90025
310-207-5055
Email: lacounsel@earthlink.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Britton D Monts
Monts &Ware
1701 N Market, Ste 330
Dallas , TX 75202
214-741-9400
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gretchen Carpenter
Strange &Carpenter
12100 Wilshire Boulevard
Suite 1900
Los Angeles , CA 90025
310-207-5055
Email: gcarpenter@strangeandcarpenter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey J Angelovich
Nix Patterson &Roach
205 Linda Dr
Daingerfield , TX 75638

903-645-7333
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Norman
Crowley & Douglas
3500 Chevron Tower
1301 McKinney St
Houston , TX 77010
713-651-1771
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Nicole C Giampaulo

represented by **Barry Leonard Kramer**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian R Strange
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Britton D Monts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Norman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy J Crowley
Crowley & Douglas
3500 Chevron Tower
1301 McKinney St
Houston , TX 77010
713-651-1771
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Citibank (South Dakota) N A

represented by **Abraham J Colman**
Reed Smith LLP
355 S Grand Ave Suite 2900
Los Angeles , CA 90071
213-457-8000
Fax: 213-457-8080
Email: acolman@reedsmith.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Christopher R Lipsett
Wilmer Cutler Pickering Hale and Dorr
399 Park Avenue
New York , NY 10022
212-230-8800
Email: christopher.lipsett@wilmerhale.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Jay R Ziegler
Buchalter Nemer
1000 Wilshire Blvd 15th Fl
Los Angeles , CA 90017-2457
213-891-0700
Fax: 213-896-0400
Email: jziegler@buchalter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew P Previn
BuckleySandler LLP
1250 24th Street NW
Suite 700
Washington , DC 20037
202-349-8000
Fax: 202-349-8080
Email: mprevin@buckleysandler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Does

1 through 100, inclusive

Objector

Carmen Schiltz

represented by **Daria Dub Carlson**
Markun Zusman and Compton LLP
17383 Sunset Blvd Suite A380
Pacific Palisades , CA 90272
310-454-5900
Fax: 310-454-5970
Email: dcarlson@mzclaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gary J Gorham
Leader Gorham LLP
1990 South Bundy Drive Suite 390
Los Angeles , CA 90025
310-696-3300
Fax: 310-696-3305
Email: ggorham@lglaw.la
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Karen L Kellett
Kellett Law Firm
750 N St Paul St, 14th Fl
Dallas , TX 75201
214-292-3660
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall J Sunshine
Liner Yankelevitz Sunshine & Regenstreif
1100 Glendon Avenue, 14th Floor
Los Angeles , CA 90024-3503
310-500-3500
Email: rsunshine@linerlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Mitchell A Guzik

represented by **Daria Dub Carlson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gary J Gorham
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Karen L Kellett
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall J Sunshine
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Debra Ramchandani

represented by **Daria Dub Carlson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gary J Gorham
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Karen L Kellett
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall J Sunshine
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Charles C Yeomans

represented by **Katherine K Yunker**
Yunker & Associates
P O Box 21784
Lexington , KY 40522-1784
859-266-0415
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

David G Behenna

represented by **David G Behenna**
111 N Sepulveda Blvd, Ste 250
Manhattan Beach, CA 90266
310-937-1555
PRO SE

Objector

Franklin Grady

represented by **Franklin Grady**
114 Montrose

Williamsburg, VA 23188
757-258-3835
PRO SE

Objector

Margaret Winkler

represented by **Robert P Cummins**
Cummins & Cronin
77 W Wacker Dr, Ste 4800
Chicago, IL 60601
312-578-0500
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas C Cronin
Cummins & Cronin
77 W Wacker Dr, Ste 4800
Chicago, IL 60601
312-578-0500
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Hannah Feldman

represented by **Joel Shapiro**
Objectors Group
717R Boston Post Rd
Sudbury, MA 01776
978-440-9828
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John J Pentz
Objectors Group
717R Boston Post Rd
Sudbury, MA 01776
978-440-9828
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Steven C Simon

represented by **Lawrence W Schonbrun**
Lawrence W Schonbrun Law Office
86 Eucalyptus Rd
Berkeley, CA 94705
510-547-8070
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Alan J Spitz

represented by **Lawrence W Schonbrun**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

J Garrett Kendrick

represented by **C Benjamin Nutley**
Kendrick & Nutley
468 N Camden Dr, Ste 200
Beverly Hills, CA 90210
310-858-5571
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Intervenor

John G Davisson

represented by **Edward W Cochran**
Edward W Cochran Law Offices
20030 Marchmont Road
Shaker Heights , OH 44122
216-751-5546
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph K Hegedus
Lewis Brisbois Bisgaard & Smith
221 North Figueroa St, Ste 1200
Los Angeles , CA 90012-2601
213-250-1800
Email: hegedus@lbbslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor

James W East

represented by **Edward W Cochran**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph K Hegedus
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Universal Bank NA

represented by **Christopher R Lipsett**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay R Ziegler
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew P Previn
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Universal Financial Corp

represented by **Christopher R Lipsett**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay R Ziegler
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew P Previn
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Plaintiff

Willie Jo Jimmerson

indivd & on behalf of all others similarly situated

represented by **Barry Leonard Kramer**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bradley E Beckworth

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Brian R Strange

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Britton D Monts

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Gretchen Carpenter

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Jeffrey J Angelovich

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Richard Norman

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Timothy J Crowley

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Plaintiff

Daniel Ryan

indiv & on behalf of all others similarly situated

represented by **Barry Leonard Kramer**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bradley E Beckworth

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Brian R Strange

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Britton D Monts

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Gretchen Carpenter
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey J Angelovich
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Norman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy J Crowley
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Mary Ann Williams
individually & on behalf of all others
similarly situated

represented by **Barry Leonard Kramer**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley E Beckworth
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian R Strange
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Britton D Monts
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gretchen Carpenter
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey J Angelovich
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Norman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy J Crowley
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED



1 a partnership revolt, we've got enough evidence and these
2 partners are out. I don't think that the partnership removed
3 them, I think they removed themselves.

4 MR. ROBINSON: I think Mr. Harris can probably
5 better speak to that in terms of the internal mechanics of
6 the firm, in terms of resignation versus forcing someone out.
7 But, in any event, they were gone, your Honor, that's the
8 most important point.

9 THE COURT: Right.

10 MR. ROBINSON: They were gone. They were no longer
11 controlling the firm, and we were left with an organization
12 that was not being dominated by culpable targets.

13 THE COURT: Which has many, many fine lawyers and
14 many, many fine men and women who work in a nonlawyer
15 capacity in the firm. And I commend the government for
16 its -- for its approach to allowing those good people who
17 didn't have any involvement in the conspiracy to continue to
18 earn a living, because they shouldn't -- it's -- it's harsh
19 enough that they're going to have to bear the results of this
20 conduct by paying \$75 million penalty. Although I understand
21 there's going to be probably years and years of litigation
22 after this case trying to recoup some of that \$75 million.
23 But I commend the government in its use of its discretion in
24 that regard.

25 All right. I don't have any other questions of the