

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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IN RE :

VISA CHECK/MASTERMONEY ANTITRUST :
LITIGATION :

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This Document Relates To :
All Actions: :

**MASTER FILE NO.
CV-96-5238
(Gleeson, J.) (Mann, M.J.)**

**CLASS COUNSEL'S PETITION FOR ATTORNEYS' FEES AND
REIMBURSEMENT OF COSTS AND EXPENSES**

CONSTANTINE & PARTNERS, P.C.

Robert L. Begleiter (RB-7052)
Matthew L. Cantor (MC-8183)
Lloyd Constantine (LC-8465)
Stacey Anne Mahoney (SM-5425)
Michelle A. Peters (MP-7804)
Amy N. Roth (AR-4534)
Gordon Schnell (GS-2567)
Jonathan Shaman (JS-8481)
Mitchell C. Shapiro (MS-1019)
Jeffrey I. Shinder (JS-5719)
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Lead Counsel for the Class

[Additional Counsel Listed on Signature Page]

State AG's.⁷⁴ For its work on this case and other matters, C&P was recently recognized by the National Law Journal as one of the top 25 plaintiffs' litigation firms in the country: "This is our pick of 25 litigation firms that seem exemplary"⁷⁵

The lead trial team, and the attorneys responsible for the bulk of the substantive work on this case, include the following C&P partners who have extensive antitrust and complex commercial litigation experience:⁷⁶

- Robert Begleiter: a 1972 graduate of New York University Law School and former Chief of the Civil Division of the United States Attorney's Office for the Eastern District of New York. Mr. Begleiter has conducted more than 40 trials in federal court, supervised hundreds more, and argued more than 20 appeals. He also has taught trial advocacy at Brooklyn Law School for many years.
- Matthew Cantor: a 1995 graduate of New York University Law School. Mr. Cantor has eight years of litigation and antitrust experience, is a frequent lecturer on various antitrust matters, and has written numerous articles on a variety of antitrust topics for numerous legal and antitrust publications.
- Lloyd Constantine: a 1972 graduate of Columbia Law School and former Assistant Attorney General in Charge of Antitrust Enforcement for the State of New York. Mr. Constantine is one of the country's leading experts in antitrust law. He has testified before Congress on numerous occasions and is a frequent lecturer, commentator, and author on competition law and policy issues. He taught antitrust law at Fordham Law School for many years.
- Stacey Anne Mahoney: a 1994 graduate of Fordham Law School and the recipient of the Archibald R. Murray Public Service Award. Ms. Mahoney has nine years of litigation and antitrust experience and is a co-author of *State Antitrust Law*, an analysis of the antitrust laws of all 50 states.

⁷⁴ Attached as App. Ex. 31 is a copy of the firm's resume which describes in more detail the type of work the firm does and the clients the firm represents.

⁷⁵ App. Ex. 32 (*The Plaintiffs' HOT LIST*, The National Law Journal, July 21, 2003, pull-out Section S). In addition to C&P, additional Class Counsel members Milberg Weiss Bershad Hynes & Lerach; Leiff Cabraser Heimann & Bernstein; and Levin Fishbein Sedran & Berman were also included on this list of 25 "go-to" firms.

⁷⁶ Attached as App. Ex. 33 are copies of the resumes of these attorneys which provides in more detail their background and experience.

- Gordon Schnell: a 1991 *Stone Scholar* graduate of Columbia Law School. Mr. Schnell has more than eleven years of litigation and antitrust experience, has written and lectured extensively on a variety of antitrust issues, and was a contributing author of *The Merger Review Process*, a guide to the law and practices surrounding the federal merger review process.
- Mitchell C. Shapiro: a 1989 graduate of the University of Pennsylvania Law School. Mr. Shapiro has fourteen years of experience in antitrust and complex commercial litigation, has argued numerous motions and appeals in various federal courts, and is a frequent lecturer on various complex commercial litigation issues.
- Jeffrey Shinder: a 1991 graduate of Osgoode Hall Law School (Toronto) and a 1994 graduate of New York University Law School's LLM program in Trade Regulation, specializing in antitrust. Mr. Shinder has eleven years of antitrust and litigation experience, has written and lectured extensively on various antitrust issues, and was a contributing author of *The Antitrust Advisor*, a leading antitrust textbook.

These attorneys were ably assisted by 8 additional C&P attorneys and paralegals, and 29 additional law firms, including such leading class action firms as co-lead counsel Hagens Berman; Milberg Weiss Bershad Hynes & Lerach; Miller, Faucher, Cafferty & Wexler; and Kirby McInerney & Squire.

2. The Quality of Defendants' Counsel

“The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work.” *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Opposing counsel in this case included some of the largest and most highly respected law firms in the country who vigorously contested virtually everything that could be contested in this case.

Heller Ehrman and Arnold & Porter (representing Visa), and Clifford Chance and Simpson Thacher & Bartlett (representing MasterCard) enabled defendants to extend this case

recovery”¹⁰⁸ Here, Class Counsel’s requested percentage falls below the norm thereby justifying a higher multiplier.

C. The Multiplier Is Overstated Because of Class Counsel’s Efficient Prosecution of this Case

Class Counsel’s multiplier is significantly overstated because of the efficiency with which Class Counsel prosecuted this case. While many lawyers worked on this case and provided valuable assistance, a small group of attorneys performed most of the substantive work.¹⁰⁹ This core group took and defended the vast majority of the depositions, drafted and argued all of the substantive motions, supervised the exchange and review of documents, and led the preparation of this case for trial.

Maintaining the primary responsibilities of this case in the hands of this small group of attorneys greatly reduced Class Counsel’s duplication of efforts. It also streamlined plaintiffs’ ability to prepare for trial by having a core group of lawyers each of whom possessed a comprehensive command of the record.

The efficiency of Class Counsel’s work is further demonstrated by their lean staffing on most substantive matters. 75% of the depositions were staffed by only one attorney. Constantine Dec. at ¶ 49. The class certification briefs were principally written by three C&P attorneys (with only two working on the Supreme Court brief against defendants’ Supreme Court “dream team”).

¹⁰⁸ Professor Coffee offered additional commentary on the proper use of the lodestar cross-check: “To be sure, there is a legitimate role for the lodestar cross check. That role is to identify circumstances in which an automatic application of the percentage of the recovery would result in a windfall to counsel, either because the case settled quickly or because others did the real work. But that is clearly not this case, which has been litigated intensively for six and one half years and was not preceded or assisted by any governmental action.” Coffee Dec. at ¶ 44.

¹⁰⁹ This group consisted of Robert Begleiter, Matthew Cantor, Lloyd Constantine, Stacey Anne Mahoney, Gordon Schnell, Mitchell C. Shapiro, and Jeffrey Shinder from C&P; and George Sampson, from Hagens Berman.

Dated: New York, New York
August 18, 2003

Respectfully submitted,

CONSTANTINE & PARTNERS, P.C.

By: _____



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