

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

Robert T. DeVaney, et al.

Plaintiffs,

v.

Davis Wright Tremaine LLP, a Washington
limited liability partnership,

Defendant.

Civil No. 10-CV-6134-HO

DECLARATION OF HERBERT E.
ADELMAN IN SUPPORT OF
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
EXPENSES

I, Herbert E. Adelman, declare:

1. I am an attorney and practice law at the Law Office of Herbert E. Adelman in Washington, D.C. and I have participated of counsel in the above-captioned action. I submit this declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses. I make this declaration based on my personal knowledge, except where otherwise indicated.

2. My personal and professional background is as follows. I was born in 1932. I graduated from the University of Pennsylvania, Wharton School in 1952, and received a Bachelor of Science in Economics. I served as an officer of the United States Navy in 1952-55. I attended Columbia University Law School from 1955-58, where I was a member of the *Columbia Law Review*, received a number of academic awards, and graduated in the top 5% of my class. I then served as a law clerk to the Honorable Judge Stanley Fuld of the New York Court of Appeals from 1958-59.

3. After completing the judicial clerkship, I worked for about three years on

securities and other matters in private practice in New York. From 1962-1966, I served as a lawyer for the United States Department of State, in the Agency for International Development, with responsibilities for complex international financings. From 1966-1982, I was in the private practice in Washington, D.C., where I handled a broad range of complex international litigation, domestic civil litigation and other commercial matters. For most of this period I was a partner at Cameron, Hornbostel and Adelman, which had offices in New York, Washington, D.C., Florida and Brazil. I then taught as a visiting Professor of Law at the University of British Columbia Law School in Vancouver, Canada and was of counsel to a large Canadian law firm from 1984-1987.

4. After returning to the Washington, D.C. area in about 1987, I substantially reduced my legal practice. As explained below, since 1994-95, all of my work has involved class action litigation and I have served as lead counsel or co-lead counsel in major class action litigation. My compensation for this work has been based on contingency fee arrangements, rather than hourly rates and, ultimately, based on court-approved fee awards.

5. As lead or co-lead counsel I such actions, and excluding this litigation, I was responsible for aggregate class action recoveries on behalf of injuries parties of about \$100 million. This has included complex class action litigation against Equitable, one of the largest insurance companies in the United States, in cases brought on behalf of policyholders who had been overcharged for policies and Equitable agents who had been deprived of health insurance and other benefits from Equitable. The last such case was *Fischel v. The Equitable Life Assurance Society of the United States*, Case No. C-96-04202 (N.D. Cal.), before the Honorable Judge Vaughn Walker of the United States District Court for the Northern District of California. The fee petition, filed on behalf of various co-counsel and myself, sought an attorney fee of 25% of the (approximately) \$48 million recovery for the class, and was granted in full by Judge Walker. In support of the 25% figure, I submitted in 2004, lodestar figures based on a \$380 hourly rate. The actual

hourly rate I received was over \$800 per hour for the substantial time I devoted to that matter. (In the other class action litigation I was involved in against Equitable, I also received court-approved fee awards after those matters were resulted in compensation substantially above \$450 an hour based, in part, on the contingent nature of those engagements).

6. I began working on potential litigation against Davis Wright & Tremaine in connection with its work for Sunwest Management, Inc. and affiliated companies in August 2008 after being contacted by investors in Harder affiliated entities. Based on review of factual materials provided by investors and other sources – and based on my experience over many years in other complex civil litigation matters, including class actions – it was my professional judgment that class litigation, rather than individual actions, provided the most efficient and economical means to secure relief for investors that had been injured by third parties (in particular, lawyers at the Davis, Wright & Tremaine firm) that had assisted the Sunwest Management enterprise in the sale of securities.

7. Before proceeding with class litigation, I undertook substantial work to confirm that there was a good faith basis for bringing securities claims against Davis, Wright Tremaine; to evaluate the various factual and legal allegations that could appropriately be included in such an action; to evaluate which of those claims could appropriately be brought on a class basis (e.g., this involved understanding the terms of the offerings made to various investors over the period at issue and the extent to which the fraudulent aspects of those offerings and the resulting injuries raised common issues appropriate for class action treatment); determining whether those claims could be pursued under Oregon state law; and framing the issues to maximize the prospects that the putative class could successfully obtain relief in the litigation. These issues are complex and involved very substantial losses for the putative class members, and considerable care was appropriately taken to understand these factual and legal issues and

determine the most effective manner to pursue them in class litigation. I worked with co-counsel Justine Fischer and attorneys at the law firm of Cohen, Milstein, Sellers & Toll who also had substantial expertise in complex litigation matters of this kind including, in particular, the effective use of class actions to secure relief for injured parties.

8. It was also my professional judgment that with respect to claims by the TIC investors against third parties such as Davis Wright & Tremaine, the third parties would likely insist on class action settlements as the most certain way to assure finality, i.e., that no additional claims could be made by investors, excluding opt outs.

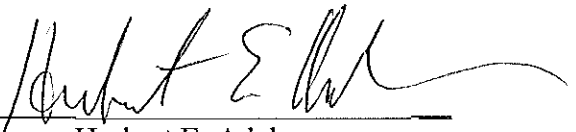
9. My work on this matter has been performed on a contingency fee basis. Accordingly, I have worked on the class action litigation for more than two years without receiving any compensation for my time or reimbursement for expenses (and would only receive compensation if the matter was brought to a successful conclusion, which was ultimately achieved when a settlement was reached).

10. I have attached to this declaration a summary of all billable work that I have performed in connection with the litigation against Davis Wright Tremaine, and expenses incurred with that work. My expense records were maintained separately and those charges are not duplicated in the billing rates.

11. I have included detailed time records that provide the basis for the lodestar summary. This detailed report is based on my contemporary records of time and expenses.

12. I am admitted to practice in New York, Washington, D.C., the United States Supreme Court and various Courts of Appeals.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on 9th day of December, 2010.



Herbert E. Adelman