

In the
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Currency Conversion Fee
Antitrust Litigation

) MDL No. 1409
)
)
) **NOTICE OF OBJECTION**
) **BY CLASS MEMBER TO**
) **PROPOSED SETTLEMENT,**
) **PLAN OF ALLOCATION,**
) **AND AWARD OF**
) **ATTORNEYS' FEES;**
) **PROOF OF CLASS**
) **MEMBERSHIP; AND**
) **NOTICE OF INTENTION**
) **TO APPEAR AT HEARING**

Edward John Hasbrouck

Istanbul, Turkey, 11 February 2008

home address: 1130 Treat Ave.

San Francisco, CA 94110 USA

contacts while travelling through July 2008:

e-mail: edward@hasbrouck.org

voicemail: +1-415-824-0214

SUMMARY

1. This lawsuit concerns the fees charged to holders of Visa, MasterCard, and Diners Club credit, debit, charge, and ATM cards (hereinafter “cards”) for transactions with merchants outside the USA, in currencies other than US dollars (hereinafter “foreign-currency card transactions”).
2. I am a member of the settlement class and an expert on the subject of this lawsuit.
3. A settlement and plan of allocation have been proposed, under which cardholders (members of the Settlement Class) who have used their cards for foreign-currency card transactions would be eligible to elect to receive either (1) US\$25, (2) an amount determined based on responses to a short questionnaire, according to an “algorithm”, or (3) an amount determined by individual records of foreign-currency card transactions, to the extent that cardholders have retained and are able to access, retrieve, or reconstruct those records.
4. According to the class counsel, the algorithm for Option 2 has not been determined.
5. Class counsel have been unable and/or unwilling to provide me as a class member with any information whatsoever on the basis of which I and other class members might be able to (a) predict what the algorithm might eventually be determined to be, (b) predict, even approximately, what our refunds might be under Option 2, according to that likely algorithm, (c) predict whether our refunds are likely to be greater under Option 2 or one of the other Options, (d) make an informed choice of which Option to elect, or whether to object to, or opt out of, the settlement.
6. The inability and/or unwillingness of class counsel to provide this information to their clients, even in response to explicit, repeated written requests, raises doubt as to (a) the adequacy of their representation of the class, (b) the appropriateness of the proposed award of attorneys' fees, and (c) the likely fairness of the algorithm and the allocation plan.
7. The only information available to me, on which to base an opinion of the likely fairness of the algorithm and the allocation plan, is (a) the statements made to me by class counsel, and (b) the

questions asked on the Option 2 claim form, on the answers to which the Option 2 algorithm must, apparently, be based.

8. It is my personal, professional, and expert opinion that both the statements made to me by class counsel, and the questions on the Option 2 claim form, indicate (a) that the algorithm is likely to be based on naïve and incorrect assumptions about the behavior, spending, and forms of payment used by different types of travellers, (b) that the algorithm is likely to result in an unnecessarily unfair allocation of the settlement, and (c) that class counsel (and perhaps whomever else is responsible for formulating the algorithm) have inadequate expertise on international travel and traveller demographics, segmentation, and patterns of behavior (including not just overall spending patterns but patterns of form of payment usage and places of payment) to formulate a fair algorithm or evaluate the fairness of a proposed algorithm. This casts further doubt on both the settlement allocation plan and the request for attorneys' fees.
9. Since it is as yet impossible for me to estimate my likely refund under Option 2 or make an informed choice of which Option to elect, and since the information available to me and other class members – even after diligent research and repeated written and telephone inquiries of class counsel – suggests that the algorithm and thus the settlement allocation are likely to be unfair and are based on inadequate expertise, and places in doubt the adequacy of the representation of the interests of all members of the class by class counsel, I object to the proposed settlement, plan of allocation and administration, and fee award.
10. I request that the Court postpone final approval of the settlement, plan of allocation and administration, and fee award until the “algorithm” for refunds under claim Option 2 is determined and class counsel have disclosed it to me and to the rest of their clients, the class members, and we have had adequate time to evaluate its fairness.

INTEREST OF THE OBJECTOR

11. I am a member of both the Settlement Injunctive Class and the Settlement Damages Class.
12. I have included below in this document a declaration under penalty of perjury, attesting to my membership in both Classes and identifying the card number and issuer of one of eligible cards.

EXPERT QUALIFICATIONS OF THE OBJECTOR

13. I am a recognized expert on international travel. I am a freelance international travel journalist, author, and consumer advocate for international travellers. I am the author of two books of consumer and how-to advice for travellers, including the leading practical guidebook for extended, independent, international travel, "The Practical Nomad: How to Travel Around the World" (Avalon Travel Publishing, 4th edition 2007). I publish an e-mail newsletter of travel advice and a Web site and blog at <http://hasbrouck.org> with more than a million visitors a year. I am regularly consulted and cited as an expert by other travel journalists, including particularly on issues related to consumer finance and travel, such as credit, debit, and ATM card and currency exchange fees and how best to pay for travel expenses.
14. I have travelled internationally myself throughout the period covered by the proposed settlement (1996-2006). I have travelled in a wide variety of styles and in a wide range of types of countries, paid for my international travel expenses in a wide range of ways, and used a variety of cards (credit, debit, and ATM) as well as cash, travellers' checks, and other forms of payment.
15. I have given travel seminars and participated in call-in and online chat programs throughout the USA and abroad, and I receive feedback and requests for advice in person and by e-mail from my readers, participants in my seminars, and clients of the travel agencies where I have worked.
16. For 15 years, including almost all of the time covered by the settlement, I was a full-time employee of a series of travel agencies specializing in independent international travel, including

from 1998-2006 for Airtreks.com, the leading travel agency in the USA specializing in around-the-world and other multistop international airline tickets, technology, and related services.

17. As part of the marketing department and an in-house travel expert and consultant to the executive team at Airtreks.com, I was responsible for research and analysis of international traveller demographics, segmentation, and patterns of behavior, travel, and spending. This included monitoring and review of industry events and reports, as well as design, oversight, and analysis of the results of custom research and consulting commissioned by Airtreks.com.
18. In the course of my employment by Airtreks.com, I designed, commissioned, and analyzed the results of a custom study by the contractor for the U.S. Department of Commerce's annual Survey of International Air Travelers to and from the USA. Based on new custom tabulations from the archived raw survey responses, this report gave substantially more detailed data, with respect to travel and spending patterns and segmentation by trip duration and other categories, than any available from the published reports on the survey results. I am thus intimately familiar with the form of the questions and responses to that survey, and their limitations.

GROUNDS FOR OBJECTION

19. According to the settlement Web site, <http://www.ccfsettlement.com/faqs/#idQ30>:

“Travel purpose and time outside the U.S. are factors captured in the U.S. Department of Commerce annual Survey of International Air Travelers, and can be used as predictors of trip expenditures outside of the U.S. The Settlement Administrator will calculate the amount of the refund under Refund Option 2 using an algorithm. The algorithm is designed to provide an estimate of a Claimant’s refund using the information supplied in the Claimant’s Refund Option 2 claim form and other data, including from the U.S. Department of Commerce’s survey noted above.”

20. The Survey of International Air Travelers (hereinafter, “the Survey”) does not ask in what manner, or by whom, expenses are billed or paid. Any algorithm used to derive foreign-currency card transactions from the responses to the survey must include numerical

assumptions or conclusions from some other source(s) as to the relationship between expenses and foreign-currency card transactions for the traveller. The Survey alone cannot be used as a predictor of foreign-currency card transactions.

21. Different travellers have dramatically different patterns of card use, and those patterns have changed substantially during the period covered by the settlement. As a result, a traveller with lower expenses, but a higher portion of those expenses paid by card, may have higher foreign-currency card transactions than a traveller with higher expenses but low card use. Of necessity, the algorithm must incorporate some assumptions or conclusions from some source(s) other than the Survey regarding the percentage of expenses paid by card.
22. As I found from the analysis of the Survey data which I designed and commissioned for Airtreks.com, travellers who are abroad for longer periods of time have very different spending patterns from travellers on shorter trips. But the claim form for Option 2 does not ask about the duration of each trip, or the average trip duration. It asks only about the total number of days spent outside the USA. It does not distinguish between someone who takes many shorter trips abroad (e.g. crossing the border each day or each week, to work or shop in Mexico or Canada, or taking many short international business trips) and someone who takes a year-long trip abroad, or lives and works abroad for an extended period). Additional assumptions or conclusions from some other source(s) would be needed to derive any estimate of the duration of each trip from the Option 2 claim responses.
23. The Survey distinguishes pre-trip expenses from expenses while abroad. But expenses while a traveller is outside the USA (estimated from the Survey), even if paid for by card, are not necessarily billed by a foreign merchant nor in foreign currency. For example, onboard expenses or excursions booked onboard a cruise ship while outside the USA may

be billed in US dollars by a cruise line in the USA. Conversely, pre-departure deposits or payments to hotels or tour operators abroad are often made by credit card and billed in in foreign currency by foreign merchants. Advance payments of tuition, fees, and expenses for study abroad may be billed either by schools abroad, or by partner schools or agencies in the USA. It would be naïve, erroneous, and indicative of a lack of travel expertise to equate the location of the traveller at the time of payment (in or out of the USA), or whether payment was made before or after departure from the USA, as indicative of the location or currency of the merchant and billing.

24. The Survey asks about the expenses for a trip, but not about who pays for those expenses. Even if they both have the same expenses (as reported or estimated by the Survey), one person may pay using their personal credit card, and another may have those expenses billed to a corporate card account, the bill for which is paid directly by their employer. As a result, these two travellers, indistinguishable from the Survey, may have dramatically different amounts of foreign-currency card transactions on their own cards.
25. As a Survey of airline passengers, the Survey provides no information whatsoever about those who cross the USA/Canada and USA/Mexico borders by land, or the huge volume of shopping, routine spending, and travel expenses by land border crossers.
26. For all of the foregoing reasons, the Survey and the Option 2 claim form are insufficient to enable me or other class members to predict our refunds under Option 2. In order to predict those refunds, we need to know what assumptions or conclusions from other sources are being, or are likely to be, used in the algorithm.

27. Like most people, I do not have credit card or bank records as far back as 1996, especially for closed accounts. Like most class members, any claim I could file under Option 3 would be grossly incomplete, and the amount of my claim would be determined more by my record-keeping and record-retention practices than by the actual amount of my foreign-currency card transactions. The fairness of the settlement allocation thus depends almost entirely on the Option 2 algorithm.
28. Like any other class members, including many of those with the largest claims – those living or travelling independently outside the USA for extended periods of time -- I (a) am currently outside the USA; (b) did not plan to return to the USA before the claim deadline; much less the deadline to decide whether to participate in the settlement, opt out, or object; (c) do not have with me financial records for previous years since 1996, calendars showing past dates outside the USA, names of issuers of previous cards, or account numbers for those cards; (d) could only retrieve those records from storage back home in the USA at the substantial expense of an unplanned trip home to the USA from abroad. Those records would be needed to prepare an Option 3 claim. So in order to know whether it would be in my best financial interest to make such a trip home to retrieve records and prepare an Option 3 claim, I first need to know how much my refund might be under Option 2.
29. I searched diligently on the settlement Web site for any information about the algorithm and the assumptions being used as the basis for it. Finding none, I contacted class counsel and requested that they tell me the algorithm. Eventually, I was advised by Mr. Davidoff, lead class co-counsel, that the algorithm had not yet been determined. When I followed up to request any information known to class counsel regarding how and on the basis of what assumptions (beyond those from the Survey) it would likely be based on, lead class co-

counsel Ms. Sweeney eventually replied that, “We have answered your questions to the best of our abilities,” without providing any further responsive information.

30. Ms. Sweeney's claim that class counsel had answered my questions to the best of their abilities would be true if and only if there were no information whatsoever, known to class counsel, which could form the basis for any prediction whatsoever as to the assumptions or the formula likely to be embodied in the algorithm, or as to the amount of refund I or any other class member might expect under Option 2. If this is true, it strongly suggests that there is as yet insufficient evidence to form the basis for the Court to approve the fairness of this as yet undetermined, unknown, and entirely impossible to predict algorithm. If Ms. Sweeney's claim is not true, and there is information responsive to my request known to class counsel, which could assist me and other class members in predicting the algorithm and thus our Option 2 refund amount and deciding which option to elect or whether to object or opt out, it was the duty of class counsel to disclose this information to their clients on request. If this is the case, their failure to do so – on specific, repeated, written request of their client – calls into serious question the adequacy of their representation of the class, and thus the appropriateness of the proposed fee award (or, perhaps, any fee award).

31. Both Mr. Davidoff and Ms. Sweeney advised me conclusorily that, “if you traveled frequently during the class period and your daily spending patterns were high, you likely would receive the highest refund utilizing Option 3.” This is unlikely to be true, but they persisted in this advice even after I pointed out that lack of records (even were I to return home, I no longer have any records of most of the issuers or numbers of my former cards) would mean that my Option 3 refund, like that of many class members, would be minimal.

32. The advice I received from class counsel that I would likely receive the largest refund under Option 3 (a) suggests that, contrary to their claims to the contrary, they did in fact have some information regarding the likely Option 2 algorithm; and (b) suggests that they had given insufficient consideration to the likely impact on Option 3 claims of lack of records as well as lack of access to records for those abroad for extended periods of time. (Those living abroad, and paying for storage in the USA, are particularly likely to have discarded all historical records except those which they anticipated they might need.)
33. Their explanation that they advised Option 3, “if you traveled frequently during the class period and your daily spending patterns were high,” suggests a naïve and erroneous conflation of “spending” with “foreign currency card spending”, which in turn suggests a lack of travel expertise and calls into question their ability to judge the fairness of the algorithm and the settlement allocation. Because identifiable and distinguishable different segments of the class have very different patterns of “foreign currency card spending” in relation to total expenses for foreign travel, this (a) calls into question whether class counsel have represented the interests of all segments of the class equally, and (b) calls into question the fairness of the algorithm and the settlement allocation.
34. Those with the largest claims are, of course, those who have lived abroad or travelled abroad for extended periods. Those likely to benefit unfairly from any algorithm based on the questions on the Option 2 claim form (which asks only about cumulative time abroad and trip purpose) are those who paid for few of their costs with merchants abroad with their personal US-issued cards. These would include particularly large numbers of those sent abroad by governmental or large corporate sponsors: military personnel on bases overseas and oil and gas workers on closed worksites, with few opportunities for local spending

abroad; those living abroad in other government- or employer-paid housing; and those able to open bank accounts abroad from which to pay living expense while abroad (which is usually difficult without assistance, most often that of a corporate employer). Those likely to be unfairly disadvantaged by the same algorithm are those who travelled or lived abroad on their own, who typically find it impossible to open a local bank account, cannot carry cash or travellers' checks sufficient for an extended stay, and of necessity pay almost all of their expenses either with US-issued cards or with local currency withdrawn from ATM's abroad with US-issued cards, often Visa- or MasterCard-branded.

35. Whether people were abroad under government or corporate sponsorship and employment, or on their own, thus may be a better indicator of foreign currency card usage than whether they were abroad for business or pleasure.
36. The class consists of more than just “travellers”. Those living abroad continuously for extended periods of time, or crossing land borders daily or weekly, are likely to spend more total time abroad, and have much greater cumulative time abroad, than all but a few of the most frequent business or leisure travellers who go abroad for only a few days or at most weeks at a time. Among the segments of the class with the largest claims are those who are or have been residents of border communities, expatriates of all types, military personnel stationed abroad, students studying abroad, and long-term independent travellers. It is especially important to ensure that the interests of these segments of the class are represented and protected, because our status (abroad, and in some cases without fixed postal addresses), makes it especially unlikely that we have received notice of the settlement (I receive all my bills and statements electronically, and have received no notice of the settlement with any of my electronic bills or statements) , and especially difficult and

costly for us to make our objections known or appear in person before the Court. I have been unable to determine whether the named plaintiffs include any representatives of any of these segments of the class, with very different interests in the Option 2 algorithm.

37. Without burdening the Court with any more detailed analysis of traveler segmentation, it is my expert opinion that the questions on the Option 2 claim form are incapable of forming the basis for a fair plan of allocation, regardless of the algorithm used.
38. While the Option 2 form and algorithm must, of necessity, be simple, they should enable as accurate a representation of actual foreign currency card spending amounts as possible, consistent with that need for simplicity. The proposed Option 2 form does not.
39. Preparing and filing these objections has cost me substantial time and out-of-pocket expenses. Filing these objections may cost me more than the refund I would receive if the settlement were approved. I appeal to the Court, in what will probably be my absence, to exercise its authority to conduct its own inquiry into the issues I have raised, to act on the objections I have raised, and to postpone final approval of the settlement, allocation, or fee award until the algorithm is determined and class counsel have disclosed it to their clients, the class members.
40. I am travelling outside the USA, and do not expect to be home or at a fixed postal address for hardcopy document delivery until after both the scheduled date of the settlement approval hearing (31 March 2008) and the proposed filing deadline for claims (30 May 2008). While I am travelling, I can be contacted by e-mail at [<edward@hasbrouck.org>](mailto:edward@hasbrouck.org), or by voicemail at USA phone number +1-415-824-0214.

Respectfully submitted,

Edward John Hasbrouck

Executed in Istanbul, Turkey

11 February 2008

home address: 1130 Treat Ave.

San Francisco, CA 94110 USA

contacts while travelling through July 2008:

e-mail: edward@hasbrouck.org

voicemail: +1-415-824-021

NOTICE OF INTENTION TO APPEAR

I, Edward John Hasbrouck, hereby give notice to the Court and to class counsel that I may formally appear at the Fairness Hearing, either in person or through an attorney.

Appearing at the hearing would entail considerable expense, either for an unplanned round-trip from Africa, where I plan to be at the time of the hearing, or for an attorney. For the reasons discussed previously in this “Notice of Objection”, I have been unable to obtain any information from which to form an informed opinion concerning my potential settlement amount. This makes it impossible to judge whether my interest in the settlement would be sufficient to justify the considerable expense of such a trip home to attend the hearing, or the probably greater cost of retaining a lawyer to represent me at the hearing. For this reason – a consequence of the same issues that give rise to my objections – I will probably be unable to afford to attend the hearing, or to be represented at it by counsel. However, I would like to participate, for the sake of the many other class members who are similarly situated but who, lacking my professional expertise and interest in the subject, have not researched the proposed settlement sufficiently to realize the reasons for my objections to it.

So I am giving this notice to preserve my rights, should I be able to raise the funds to attend. If, as is likely, I am unable to afford to attend the hearing, I appeal to the Court to exercise its authority to act on the objections I have raised, and to postpone final approval of the settlement, allocation, or fee award until the algorithm is determined and class counsel have disclosed it to their clients, the class members.

Edward John Hasbrouck

PROOF OF CLASS MEMBERSHIP

I, Edward John Hasbrouck, hereby certify under penalty of perjury that:

1. I held a Visa- or MasterCard-branded credit, charge or debit/ATM card issued in the United States as of 8 November 2006. I am therefore a member of the Settlement Injunctive Class as defined on the settlement Web site at <http://www.ccfsettlement.com/faqs/#idQ19>.
2. I made foreign transactions using Visa- or MasterCard-branded credit, charge or debit/ATM cards between 1 February 1996 and 8 November 2006. I am therefore a members of the Settlement Damages Class as defined on the settlement Web site.
3. I am currently travelling outside the USA. I have not been home since June 2007, and do not expect to be back in the USA until June 2008, or home until July 2008. This means that I do not expect to be home, or in the USA, until after the proposed deadline for filing of claims. Filing the fullest claim under Option 2 would require me to return home to retrieve and review my records of international travel dates, and filing a claim under Option 3 would require me to return home, retrieve and analyze financial records, and reconstruct missing or no longer retained records.
4. One of the cards which I had and used for foreign transactions during the period covered by settlement was Visa-branded card _____ issued by _____.
5. I also had other Visa- and MasterCard-branded cards during the period covered by the settlement, and used some of them for foreign transactions. I am currently unable to identify those cards.

6. I obtained new credit, debit, and ATM cards for my current year-long trip abroad. The Visa- or MasterCard-branded cards I have with me were all issued after 8 November 2006. I only have with me, or have online access to, information concerning accounts for the cards I have with me.

7. When I left home in June 2007, and left the USA in July 2007, I had no reason to anticipate any need to access my archived historical records during my time away from home and abroad.

8. My records concerning my cards subject to this settlement, and those travel records which I have retained, are in storage in San Francisco, and unavailable to me without returning home to retrieve and reconstruct them. Since (for the reasons discussed previously in this “Notice of Objection”) I have been unable to obtain any information from which to form an informed opinion concerning my potential settlement amount under either Option 2, I have been unable to determine whether my claim might justify the considerable expense of such a trip home.

Executed in Istanbul, Turkey

11 February 2008

Edward John Hasbrouck

CERTIFICATE OF SERVICE

I, Edward John Hasbrouck, hereby certify that I am today serving copies of this “Notice of Objection by Class Member to Proposed Settlement, Plan of Allocation, and Award of Attorneys' Fees” by (1) sending copies by electronic mail to the addresses class counsel have used to communicate with me, Bonny Sweeney <BonnyS@csgrr.com> and Merrill Davidoff at <mdavidoff@bm.net>; and (2) sending copies by express airmail, postage paid, from the central post office in Istanbul, Turkey, to:

Merrill G. Davidoff
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103
USA

Bonny E. Sweeney
Coughlin Stoia, Geller, Rudman & Robbins, LLP
655 West Broadway, Ste. 1900
San Diego, CA 92101
USA

Executed in Istanbul, Turkey

11 February 2008

Edward John Hasbrouck