

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*Silvia Seijas, et al.,* ) 04 Civ. 400 (TPG)  
)  
Plaintiffs, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

*Silvia Seijas, et al.,* ) 04 Civ. 401 (TPG)  
)  
Plaintiffs, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

*Cesar Raul Castro,* ) 04 Civ. 506 (TPG)  
)  
Plaintiff, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

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**MEMORANDUM OF GUILLERMO A. GLEIZER  
IN SUPPORT OF APPLICATION FOR AWARD  
OF ATTORNEY FEES AND EXPENSES**

*Hickory Securities Ltd.,* ) 04 Civ. 936 (TPG)  
)  
Plaintiff, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

*Claudia Florencia Valls, et al.,* ) 04 Civ. 937 (TPG)  
)  
Plaintiffs, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

*Elizabeth Andrea Azza, et al.,* ) 04 Civ. 1085 (TPG)  
)  
Plaintiffs, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

*Eduardo Puricelli,* ) 04 Civ. 2117 (TPG)  
)  
Plaintiff, )  
v. )  
)  
*The Republic of Argentina,* )  
)  
Defendant. )  
\_\_\_\_\_ )

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<i>Ruben Daniel Chorny,</i>	)	04 Civ. 2118 (TPG)
	)	
Plaintiff,	)	
v.	)	
	)	
<i>The Republic of Argentina,</i>	)	
	)	
Defendant.	)	
_____	)	

**MEMORANDUM OF GUILLERMO A. GLEIZER  
IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS’ FEES**

Guillermo A. Gleizer, one of the lawyers who have served as class counsel in these eight cases, respectfully submits this memorandum in support of his motion for an award of attorneys’ fees pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2).

**Introduction**

The Court may recall that Mr. Gleizer is the lawyer who was retained by the Argentine bondholders who became named plaintiffs in these eight class actions in 2004 -- he originated the cases. Mr. Gleizer worked with Saul Roffe, whom Mr. Gleizer brought in at the start of the cases, in getting the cases off the ground, including drafting and defending the pleadings, seeking class certification, and moving for summary judgment rejecting Argentina’s affirmative defenses. As detailed in the Declaration of Guillermo A. Gleizer, submitted herewith, he was a central player in prosecuting the cases through mid-2010.

In February 2010, Mr. Gleizer became of counsel to Diaz, Reus & Targ, LLP, and brought his part of these cases to that firm. In their written agreement, the parties agreed that the Diaz firm would substitute in for Mr. Gleizer as co-lead counsel, and Mr. Gleizer would continue to participate in the cases through the Diaz firm. The Court approved the substitutions.

By mid-year, however, the relationship soured, and Mr. Diaz had Mr. Gleizer locked out of his office and the firm's document system. Both sides notified the Court that Mr. Gleizer was no longer of counsel to the Diaz firm. In a Memorandum dated August 30, 2010, the Court took note of the developments and observed, "it is clear that Mr. Gleizer will no longer be appearing on behalf of the plaintiffs in these matters." Mr. Gleizer did not thereafter appear in the cases, until the present application.

The other class counsel -- meaning Mr. Roffe, the Diaz firm, and Proskauer LLP (which joined Gleizer and Roffe for these cases in November 2006) -- have refused Mr. Gleizer's requests to coordinate in presenting settlement approval papers and a joint application for fees and expenses. As set forth in Mr. Gleizer's declaration, he made such requests several times. The other counsel told Mr. Gleizer to file his own papers. They would not share the dollar amount of class member claims that have been submitted, or the size of the fee they intend to request.

The Court is intimately familiar with these cases and the settlement situation with Argentina. It is evident that the settlements should be approved. Mr. Gleizer joins other class counsel in making that request. The class mechanism also will provide some closure to Argentina in seeking to resolve all its outstanding bond indebtedness.

As for fees, class counsel have worked hard for many years on these cases, without assurance of any success or fees. This is a common fund situation in which all plaintiffs' counsel should share in any fee that is awarded. Mr. Gleizer is not making a separate fee proposal for himself. The present motion simply asks that the Court approve the settlements, consider Mr. Gleizer's lodestar in deciding on an overall fee award, and make the award to all plaintiffs' counsel together. Hopefully counsel will be able to negotiate a fair allocation of fees among

themselves, based on their preexisting written agreements and understandings, and avoid any disputes in this Court or elsewhere.

As set forth in the Gleizer declaration, Mr. Gleizer reports a lodestar amount of \$5.2 million in prosecuting these cases. He is not seeking an award of expenses because other class counsel, by agreement, incurred most of the expenses, and Mr. Gleizer has not been able to get access to his expense records sufficient to support an award of expenses to him.

**A. Class Counsel Undertook These Cases on a Contingent Fee Basis**

These cases were prosecuted on a contingent fee basis from the outset. There was never any assurance that Argentina was willing or able to pay anything on the bonds. The named plaintiffs were people of generally modest financial means and did not have the wherewithal to pay for legal services on an hourly or other current fee arrangement. The prosecution of the cases as proposed class actions provided the prospect that aggregate recoveries might be obtained, which in turn might support fee awards commensurate with the risk and amount of work taken on by plaintiffs' counsel.

Of course, no one knew at the outset how quick or protracted the cases might be. As it has turned out, Argentina's resistance to making any payments on the bonds was protracted far beyond any reasonable expectations that plaintiffs' counsel may have had at the outset. That resistance increased the amount of work required to keep the cases going, and indicated there was ongoing risk that no recoveries at all might be accomplished.

Ironically, the fact that Argentina made exchange (swap) offers in 2005 and 2010 also increased class counsel's risk. That is because the bondholders could accept the swap offers directly, even bondholders who were defined to be class members in the class complaints, and

who in later years were members of certified classes. The Court's ruling that the exchange offers, if accepted by class members, would not be considered class settlements meant that class counsel did not participate in those settlements, and that the recoveries would not be attributable to class counsel and no attendant attorneys' fees would result.

**B. The Settlements Will Create a Common Fund**

Class members who have submitted claim forms qualifying them for participation in the settlements will receive consideration from Argentina that constitutes a "common fund" for the purpose of considering a fee and expense award to class counsel.

Rule 23(h) provides that: "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The U.S. Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Second Circuit has likewise held that "[i]t is well established that the common fund doctrine permits attorneys whose work created a common fund for the benefit of a group of plaintiffs to receive reasonable attorneys' fees from the fund." *Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 86 (2d Cir. 2010); *see also In re Zyprexa Prods. Liab. Litig.*, 594 F.3d 113, 128–29 (2d Cir. 2010); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered in creating that fund and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 0165(CM), 2007 WL 4115808, at \*2 (S.D.N.Y. Nov. 7, 2007). The doctrine applies both where the class as

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a whole receives an aggregate award, and where class members qualify for awards individually (as here) as determined “by a formula that permits determination of the amount of the aggregate benefit conferred on the class.” *In re Zyprexa*, 594 F.3d at 129.

**C. Fees Should Be Awarded Based on a “Percentage of the Fund”**

“Courts may award attorneys’ fees in common fund cases under either the ‘lodestar’ method or the ‘percentage of the fund’ method.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). “Nonetheless, the trend among district courts in the Second Circuit is to award fees using the percentage method.” *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at \*12 (S.D.N.Y. Dec. 19, 2014) (collecting cases). The percentage method is so well established that further discussion is unnecessary.

**D. The Court Should Also Consider a “Lodestar Cross-Check”**

The Second Circuit encourages use of the lodestar “as a ‘cross check’ on the reasonableness of the requested percentage.” *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 820 (3d Cir. 1995). Counsel’s lodestar is the product of hours reasonably expended by counsel and a reasonable rate for counsel’s efforts, see *Wal-Mart*, 396 F.3d 96, 123 fn.27.[.]” *Cassese v. Williams*, 503 F. App’x 55, 59 (2d Cir. 2012), quoting *Goldberger*, 209 F.3d at 50.

As stated in the Gleizer declaration, Mr. Gleizer contributed \$5.2 million in lodestar to the prosecution of these cases.

**E. The Court Should Also Apply the “Goldberger” Factors**

The Second Circuit has traditionally determined the reasonableness of fees paid from a common fund by considering the following six factors: (1) the time and labor expended by

counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement -- or common fund -- amount; and (6) public policy considerations. *In re World Trade Ctr. Disaster Site Litig.*, 754 F.3d 114, 126 (2d Cir. 2014), *citing Goldberger*, 209 F.3d at 50.

The first three factors have been discussed above. Mr. Gleizer submits that class counsel have diligently and competently prosecuted these cases, and have held their own against very skilled defense counsel. In the absence of information about the total amount of claims entitled to participate in the settlements, Mr. Gleizer cannot comment about the fifth factor at this time. Finally, the Court has already expressed its strong view that settlements in these cases are highly desirable from the points of view of the investing public, the governments involved, and the courts.

**F. Mr. Gleizer Lacks Sufficient Information From Other Class Counsel to Assess the Fairness of Any Particular Fee Request**

As described above, the other class counsel have not shared with Mr. Gleizer the amount of the bondholder claims that qualify for settlement, and the aggregate settlement consideration that will be distributed. Nor have the other class counsel provided their lodestar and expense information to Mr. Gleizer. Mr. Gleizer repeatedly requested this information but it was not furnished.

Given the magnitude of the risk undertaken by class counsel and the extensive amount of work done, it seems highly likely that the other class counsel will request fees on a justifiable basis. If necessary, Gleizer will provide any further arguments or commentary in a reply memorandum, in light of the information that will presumably be provided by other class counsel in their submissions on October 3.



**G. The Court Should *Not* Consider or Resolve Any Possible Issues Concerning Allocation of Fees Among Counsel At This Time**

A fee award based on the criteria described above would need to be allocated among class counsel. Based on the unwillingness of other counsel even to share basic information with Mr. Gleizer in connection with the present application, fee disputes unfortunately seem to be in the wind.

Discussion and negotiation among counsel would be the first step in trying to resolve any such dispute. If that does not work, there may have to be more formalized procedures to address the written agreements among counsel pertaining to fees, the equities, and any other appropriate factors. As stated above, Mr. Gleizer respectfully urges the Court to award an overall fee, and *not* to become involved in any allocation disputes unless or until it becomes necessary or appropriate.

**H. Mr. Gleizer Is Not Seeking Reimbursement of Expenses**

As stated in his declaration, most of the expenses of prosecuting these actions were borne by other class counsel, based on agreements among counsel. In addition, Mr. Gleizer has been unable to retrieve records supporting expenditures for travel, investigators, and researchers that he did incur. Mr. Gleizer has accordingly decided not to include a request for reimbursement of expenses in this application.

**Conclusion**

Mr. Gleizer respectfully submits and requests:

1. The settlement should be approved.

2. The total settlement value may be ascertained from class members' proofs of claim. Other class counsel with access to the proof of claim information presumably have calculated the total value.

3. The Court should consider the fee request made by other class counsel (presumably on a percentage basis); and cross-check the resulting proposed fee with the total reported lodestars of class counsel, including Mr. Gleizer's lodestar submitted herewith. (If the fee request by other class counsel is not on a percentage basis, Mr. Gleizer would seek permission to review their information and supplement this fee application.) The Court should approve a fair percentage after considering counsels' submissions and lodestars and the *Goldberger* factors. Since Mr. Gleizer has not been given information about the total value of the settlement and the amount of fees requested and lodestars submitted by the other class counsel, Mr. Gleizer cannot make a more specific submission about fees at present.

4. The Court should make only an aggregate fee award to all class counsel at this time, and direct class counsel to try to agree on an allocation among themselves. If agreement on allocation cannot be reached, the Court should consider alternative methods to resolve the issue. Fees should not be approved for disbursement to any class counsel until an allocation has been agreed by all class counsel, or has been judicially approved.

5. Mr. Gleizer is not seeking reimbursement of expenses in this application, and lacks any information about other class counsels' requests.

Dated: October 3, 2016



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