

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Laydon v. Mizuho Bank, Ltd., et al.

No. 12-cv-3419 (GBD)
(HBP)

DECLARATION OF VINCENT BRIGANTI, ESQ.

I, Vincent Briganti, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a shareholder with the law firm Lowey Dannenberg, P.C. (“Lowey Dannenberg”). I submit this Declaration in connection with the pending Motion for Preliminary Approval of Class Action Settlement with The Bank of Yokohama, Ltd. (“The Bank of Yokohama”), Shinkin Central Bank (“Shinkin”), The Shoko Chukin Bank, Ltd. (“Shoko Chukin”), Sumitomo Mitsui Trust Bank, Ltd. (“Sumitomo”),¹ and Resona Bank, Ltd. (“Resona,” and collectively with The Bank of Yokohama, Shinkin, Shoko Chukin, and Sumitomo, the “Settling Defendants”), and the pending Motion for Preliminary Approval of Class Action Settlement with Mizuho Bank, Ltd., Mizuho Corporate Bank, Ltd.,² and Mizuho Trust & Banking Co., Ltd. (collectively, “Mizuho”), The Norinchukin Bank (“Norinchukin”), and Sumitomo Mitsui Banking Corporation (“SMBC”) filed at ECF Nos. 957-60.

2. A true and correct copy of the Amended Stipulation and Agreement of Settlement with The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona dated September 5, 2019 is attached as Exhibit 1.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Affidavit of Linda Young, dated September 5, 2019.³

4. Attached hereto as Exhibit 3 is a true and correct copy of the Proposed Mailed Notice.

¹ Sumitomo Mitsui Trust Bank, Limited was formerly known, and was sued as The Sumitomo Trust and Banking Co., Ltd. (“STB”). The Chuo Mitsui Trust and Banking Company, Limited, which was also sued in the *Laydon* action, merged into STB prior to the action to form Sumitomo Mitsui Trust Bank, Limited.

² On July 1, 2013, Mizuho Bank, Ltd. merged with Mizuho Corporate Bank, Ltd. After the merger, Mizuho Corporate Bank, Ltd. was the surviving entity and Mizuho Bank, Ltd. dissolved. The new entity was renamed Mizuho Bank, Ltd.

³ The proposed notice plan, reflected in Exhibit 2, and the Proposed Mailed Notice, Proposed Publication Notice and Proof of Claim and Release form attached hereto will provide notice of this proposed settlement with the Settling Defendants and the proposed settlement with Mizuho, Norinchukin, and SMBC filed with this Court.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Proposed Publication Notice.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Proof of Claim and Release form.

7. Attached hereto as Exhibit 6 is a true and correct copy of Lowey Dannenberg's firm Resume.

8. **Experience.** At the time the proposed settlement with the Settling Defendants (the "Settlement") was being negotiated, my firm and I were experienced in prosecuting claims under the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq.*, Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.* See Exhibit 6.

9. **Well-Informed.** Before reaching the Settlement, Class Counsel⁴ was well-informed regarding the strengths and weaknesses of Representative Plaintiffs' claims. Lowey Dannenberg extensively reviewed and analyzed the following documents and information: (i) settlement cooperation provided by Defendants The Bank of Tokyo-Mitsubishi UFJ, Ltd. now known as MUFG Bank ("BTMU") and Mitsubishi UFJ Trust and Banking Corporation ("MUTB"), Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, "Deutsche Bank"), JPMorgan Chase & Co., JPMorgan Chase Bank, National Association and J.P. Morgan Securities plc (collectively, "JPMorgan"), R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd. (collectively, "R.P. Martin"), Citigroup Inc., Citibank, N.A., Citibank Japan Ltd. and Citigroup Global Markets Japan Inc. (collectively, "Citi"), and HSBC Holdings plc and HSBC Bank plc (collectively, "HSBC") in connection with settlements in this action and the related *Sonterra Capital* action;⁵ (ii) government

⁴ Unless otherwise defined, capitalized terms shall have the same meanings as defined in the Settlement.

⁵ *Sonterra Capital Master Fund, Ltd. v. UBS AG.*, No. 15-cv-5844 (GBD) (S.D.N.Y.).

settlements, including plea, non-prosecution, and deferred prosecution agreements; (iii) publicly-available information relating to the conduct alleged in Representative Plaintiffs' complaints; (iv) expert and industry research regarding Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives in the futures and over-the-counter markets; and (v) discovery produced to date in *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) ("*Laydon*"). In addition, Lowey Dannenberg: (a) conducted an extensive investigation into the facts and legal issues in this action and the related *Sonterra Capital* action; (b) engaged in extensive negotiations with the Settling Defendants; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims, including ongoing consultations with a leading commodity manipulation consulting expert.

10. **Procedural History.** The procedural history of the Actions is detailed in my prior declarations in support of preliminary approval of the settlements with BTMU and MUTB (ECF No. 851 ¶¶ 10-13), Deutsche Bank and JPMorgan (ECF No. 775 ¶¶ 10-21), R.P. Martin and Citi (ECF No. 567 ¶¶ 10-20), and HSBC (ECF No. 656 ¶¶ 5-12), and in support of final approval of the R.P. Martin, Citi, HSBC, Deutsche Bank, JPMorgan, BTMU and MUTB settlements (ECF No. 687 ¶¶ 2-55; ECF No. 814 ¶¶ 2-62; ECF No. 871 ¶¶ 3-79). These declarations are incorporated herein by reference. Since my prior declarations, the following events have occurred in the Actions:

11. On July 12, 2018, the Court granted Representative Plaintiffs' motion for final approval of the settlement with BTMU and MUTB (ECF No. 891) and entered a final judgment and order dismissing BTMU and MUTB from the Actions with prejudice. ECF No. 890.

12. Laydon and Defendants continued to engage in fact and expert discovery. Plaintiff Laydon served Rule 30(b)(6) deposition notices on all Defendants in this action in July 2018. After receiving Defendants' responses and objections, the parties had multiple meet-and-confers concerning the scope of the notices and the timing of productions and/or depositions concerning

the topics. These negotiations and related Rule 30(b)(6) depositions remain ongoing.

13. Plaintiff Laydon and the remaining non-settling defendants reached an agreement on an expert discovery stipulation. ECF No. 928. Expert discovery remains ongoing.

14. In light of the significant work of the discovery, the Court granted requests to extend the discovery schedule. ECF Nos. 902, 910, 916, 956.

15. On April 30, 2019, certain Defendants requested a pre-motion conference regarding a motion to compel Plaintiff Laydon to produce absent class members' Proofs of Claim and Release and electronic data compiled by the Settlement Administrator relating to prior settlements. ECF No. 933. Plaintiff Laydon opposed the request on May 14, 2019 (ECF No. 936) and certain Defendants filed a reply on May 23, 2019. ECF No. 939. On June 3, 2019, following oral argument, the Court issued an order declining to compel Plaintiff Laydon to produce the settlement information, but permitting Defendants to serve a subpoena to seek the materials from the Settlement Administrator.

16. On July 12, 2019, the Court entered an order granting a request for international judicial assistance filed by Société Générale to facilitate the exchange of information requested by Plaintiff Laydon in his Rule 30(b)(6) deposition notice. ECF No. 948.

17. On August 29, 2019, Representative Plaintiffs and Mizuho, Norinchukin and SMBC executed the Stipulation and Agreement of Settlement. Plaintiff Laydon filed a motion for preliminary approval of the settlement on August 30, 2019. ECF Nos. 957-60.

18. On September 5, 2019, Representative Plaintiffs and Settling Defendants executed the Amended Stipulation and Agreement of Settlement.

19. **Arm's-Length**. Negotiations leading to the Settlement were entirely non-collusive and strictly arm's-length. During the course of negotiations, Representative Plaintiffs had the benefit of developing information from various sources, including the BTMU and MUTB settlement

cooperation, the Deutsche Bank settlement cooperation, the JPMorgan settlement cooperation, the R.P. Martin settlement cooperation, the Citi settlement cooperation, the HSBC settlement cooperation, discovery produced to date in *Laydon*, certain Defendants' government settlements and orders, other public accounts of manipulation involving Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives, Class Counsel's investigation into Representative Plaintiffs' claims, industry and expert analysis, previous decisions in *Laydon* and *Sonterra Capital*, and information shared by the Settling Defendants during the Settlement negotiations. I was involved in all aspects of the settlement negotiations on behalf of Representative Plaintiffs. Settling Defendants were also well-represented by some of the leading law firms in the United States. Their attorneys have decades of experience and are some of the leading defense practitioners in commercial, antitrust, securities, CEA, and class action litigation cases.

20. In addition, as with the last four settlements approved in this action, one of the *Sonterra Capital* plaintiffs, the California State Teachers' Retirement System ("CalSTRS")—the largest educator-only pension fund in the world and the second largest pension fund in the United States—was directly involved in negotiating the Settlement with Settling Defendants.

21. **Settlement Negotiations.** The negotiations with The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona took place over several years starting approximately in December 2014 and continuing until the Amended Stipulation and Agreement of Settlement was executed in September 2019.

22. Initial settlement discussions in December 2014 did not advance, and settlement discussions did not resume again until May 2017, after the Court issued an order denying certain Defendants' request for reconsideration of the Court's earlier personal jurisdiction decision. Lowey Dannenberg met with counsel for The Bank of Yokohama, Shinkin, Shoko Chukin, and Sumitomo in July 2017, but those settlement discussions also did not progress further. Lowey Dannenberg and

counsel for certain defendants, including The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona, discussed settlement in July and August 2018, but these discussions were unsuccessful. In fall 2018, the *Laydon* and *Sonterra Capital* plaintiffs and counsel for The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona agreed to revisit whether a settlement could be reached. These discussions proved to be successful, culminating with the execution of a settlement agreement in March 2019 and an amended settlement agreement in September 2019.

23. The Settlement was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations with Settling Defendants and before any demand or counter-offer was ever made, I was well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Representative Plaintiffs' claims against the Settling Defendants.

24. The Settlement involves a structure and terms that are common in class action settlements in this District.

25. The consideration that the Settling Defendants have agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval.

26. Lowey Dannenberg has strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Bank of International Settlements which shows that trillions of dollars of Euroyen-based interest rate swaps and forward rate agreements were traded within the United States from 2006 through 2011, as well as data from the settlement cooperation produced to date by R.P. Martin, Citi, HSBC, Deutsche Bank, JPMorgan, BTMU and MUTB.

27. Lowey Dannenberg has diligently represented the interests of the Class in the Actions. The firm investigated and brought the Actions. Lowey Dannenberg preserved the statute of limitations. Lowey Dannenberg negotiated the Settlement with the Settling Defendants. The firm

