

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: RAILWAY INDUSTRY	)	Master Docket Misc. No. 18-798
EMPLOYEE NO-POACH ANTITRUST	)	
LITIGATION	)	MDL No. 2850
	)	
This Document Relates to:	)	
ALL ACTIONS	)	

**DECLARATION OF ROBERTA D. LIEBENBERG IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, Roberta D. Liebenberg, declare as follows:

1. I am a Partner at the law firm of Fine, Kaplan and Black, RPC (“Fine Kaplan” or “FKB”). I was appointed by the Court to serve as Interim Co-Lead Class Counsel in this action, along with Dean M. Harvey of Lief Cabraser Heimann & Bernstein, LLP (“Lief Cabraser”), and the Court subsequently appointed us Class Counsel with respect to the settlements in this litigation. I make this Declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards. I have personal knowledge of the following facts and, if called as a witness, I could competently testify to these matters.

2. Fine Kaplan is a nationally recognized firm located in Philadelphia. It devotes its practice entirely to litigation, with an emphasis on antitrust, class actions, consumer protection, complex commercial litigation, and white-collar criminal defense. I have been appointed by numerous courts to serve as Lead Counsel, including by Judge Cynthia Rufe as Lead Counsel for the End-Payer Class in one of the largest antitrust class actions in history. *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724 (E.D. Pa.). In *In re Urethane Antitrust Litigation*, MDL No. 1616 (D. Kan.), I served as Co-Lead Counsel for 12 years in an action alleging price fixing of certain urethane chemical products by five major manufacturers.

After a four-week trial in which I served as one of the trial counsel, plaintiffs obtained a jury verdict in excess of \$400 million against the Dow Chemical Company. The court entered judgment for \$1.06 billion after trebling – the largest judgment in the U.S. in 2013 and the largest price-fixing judgment ever. The Class ultimately settled with Dow for \$835 million while the case was on appeal in the United States Supreme Court. The total settlements in the case were over \$974 million, and at the conclusion of the case, the court commented: “In almost 25 years of service on the bench, this Court has not experienced a more remarkable result.” *Urethane*, 2016 WL 4060156, at \*4 (D. Kan. July 29, 2016).

3. I have reviewed the Court’s November 6, 2018 Order Appointing Interim Co-Lead Class Counsel (Dkt. No. 106) (“Order”), including, in particular, the Order’s timekeeping provisions regarding fees, costs, and expenses. The Firm has adhered to those provisions throughout this litigation. During the course of this litigation, acting in its leadership capacity, the Firm has been involved in the activities described below on behalf of the Settlement Class.

4. The Firm conducted a thorough pre-complaint investigation, including an analysis of the pleadings in the related Department of Justice proceedings. Thereafter, in the Summer of 2018, Fine Kaplan filed two complaints, including one in the Western District of Pennsylvania on August 23, 2018. The Complaints alleged that the world’s dominant rail equipment suppliers – Wabtec, Knorr, and Faiveley – conspired to restrain competition and reduce compensation for their railway industry employees in the United States.

5. In the Fall of 2018, Fine Kaplan played a central role in drafting the Consolidated Class Action Complaint, including synthesizing the factual allegations, researching the legal claims and vetting the Named Plaintiffs. The Consolidated Class Action Complaint was filed on October 12, 2018.

6. I prepared for and appeared at the initial Case Management Conference held by the Court on November 7, 2018 pursuant to Federal Rule of Civil Procedure 16. We also drafted significant portions of the joint Rule 26(f) Report that was filed in advance of the Conference.

7. Fine Kaplan drafted and propounded targeted discovery requests to Defendants, which set the framework for discovery in this case. These comprehensive discovery requests were served shortly after the Case Management Conference.

8. On November 27, 2018, Defendants moved to dismiss the Consolidated Class Action Complaint, arguing that Plaintiffs had failed to adequately plead a *per se* violation of Section One of the Sherman Act and also moved, in the alternative, to strike Plaintiffs' class action allegations. Plaintiffs filed an opposition brief on January 11, 2019, and Defendants filed a reply brief on February 12, 2019. Plaintiffs also filed Notices of Supplemental Authority on February 22, 2019 and June 3, 2019. Oral argument was held on February 25, 2019. Fine Kaplan was involved in all aspects of the research and drafting of the opposition briefs on this important motion.

9. Fine Kaplan also played a central role in all aspects of the meet-and-confer process throughout this case, including the negotiation of the Protective Order, ESI protocol, and custodians and key word search terms. The negotiation and agreement on these documents, custodians and search terms was necessary for Defendants to respond to Plaintiffs' document requests.

10. Fine Kaplan participated in numerous telephonic meet-and-confers with Defendants relating to the scope of the discovery requests, custodian and key word search terms, and extensive back and forth relating to follow up questions on the production of documents and data. Meet-and-confer calls often occurred weekly or bi-weekly throughout this case to allow

the parties to thoroughly discuss issues and work out any potential disputes. The parties exchanged over 250 formal letters and many more emails as part of this meet-and-confer process.

11. The Firm also played a key role on the few occasions where discovery disputes could not be resolved and were taken up with Special Master David White, including drafting briefs and presenting oral argument to the Special Master. Specifically, in December 2018, the parties sought the Special Master's recommendation on parameters for any communications between Defendants and potential class members pursuant to Pennsylvania Rule of Professional Conduct 4.2. In February 2019, the parties sought the Special Master's assistance with respect to privilege log issues concerning certain communications with potential class members.

12. Defendants produced over 194,000 documents and extensive compensation data in this case in less than one year. Additionally, 19 third parties produced over 10,400 documents. Fine Kaplan played a critical role in analyzing all of this voluminous information. We assigned reviewers to the document review team and were also primarily responsible for organizing and synthesizing the liability evidence in chronologies, memoranda, and other working documents. We also worked with Plaintiffs' experts to analyze the compensation data to understand it and organize it into a useful format so that the experts could begin analyzing potential damages in this case. This work was also critical to the effort to define the job titles in the Settlement Class, which will be described in more detail below.

13. Fine Kaplan also played a central role in responding to discovery requests propounded by Defendants. The Firm was the primary drafter of Plaintiffs' initial disclosures and assisted in preparing responses to 19 document requests and 16 interrogatories. We were

also involved in an extensive document collection and production effort on behalf of the Plaintiffs.

14. From the inception of the case to the end, Fine Kaplan appeared on all of the Court's monthly telephonic status conferences and prepared the monthly agendas that were filed in advance of those status conferences.

15. On June 20, 2019, the Court ruled on Defendants' Motion to Dismiss. It held that Plaintiffs had plausibly alleged a conspiracy and rejected Defendants' argument that the rule of reason, rather than *per se* review, applied to the alleged conspiracy. However, the Court granted the Motion to Strike Class Allegations, without prejudice to Plaintiffs amending their Complaint to address certain class definition issues.

16. Thereafter, Fine Kaplan worked to draft a Consolidated Amended Complaint addressing the class definition issues outlined in the Court's Opinion. On July 31, 2019, Plaintiffs filed the Consolidated Amended Complaint, which narrowed the class definition from all employees to those employees "who worked in job families in which railway industry experience or skills were valuable." In response, on August 30, 2019, Wabtec once again moved to strike the class allegations. Plaintiffs filed an opposition brief on September 30, 2019 and thereafter, Wabtec filed a Reply Memorandum on October 15, 2019. Fine Kaplan was again involved in all aspects of researching and drafting the opposition brief on this motion, which the Court denied without prejudice pending the outcome of the subsequent mediation process.

17. To prepare the list of job titles that met the revised class definition, Fine Kaplan worked on the careful, expert-led review of 1,471 job titles for Knorr falling under 253 job families, and 1,746 job titles for Wabtec in 444 job families. Specifically, job titles were reviewed to remove categories of employees that were: (1) explicitly excluded from the

proposed Settlement Class (*e.g.*, senior executives, human resources, and legal personnel) and (2) lacking specific rail-industry value or skills (*e.g.*, administrative assistants, janitors). For the remaining job families and job titles, job descriptions and job postings were reviewed to clarify the skills required. Through this review, we were able to identify additional job titles or families that could be excluded. This work ultimately led to the list of eligible job titles for the Settlement Class.

18. Fine Kaplan also was integrally involved in all aspects of settlement negotiations. Along with Dean Harvey, I attended a settlement meeting in March 2019 with Knorr. I then participated in hard-fought negotiations over the course of four months, including dozens of telephonic conference calls with Knorr to negotiate the settlement. Fine Kaplan also was intimately involved in the negotiations and drafting of the Memorandum of Understanding and the subsequent Settlement Agreement with Knorr.

19. In August 2019, the Court directed Plaintiffs and Wabtec to participate in a mediation. Fine Kaplan was central to all phases of the mediation. This included the selection of the mediator, work on the additional data requests that would be necessary for the mediation and, along with Lief Cabraser, preparation of a detailed confidential mediation statement. We then participated in two mediation sessions and numerous telephonic conference calls that ultimately led to the settlement with Wabtec. Like the negotiations with Knorr, the negotiations with Wabtec were hard fought and substantive and, thus, required extensive work to prepare for each mediation session and telephonic negotiation session. Fine Kaplan also was heavily involved in negotiating and drafting the Memorandum of Understanding and the subsequent Settlement Agreement with Wabtec.

20. Thereafter, Fine Kaplan helped draft the motion for preliminary approval, notices and associated papers, including claim form. This involved extensive work with KCC LLC, the Notice Administrator in this case (“KCC” or “Notice Administrator”). Due to some limitations relating to Defendants’ data concerning class membership and their job titles, multiple notices needed to be drafted and the claims process required more work than prior no-poach antitrust cases. Fine Kaplan was involved with drafting the publication notice as well as two long-form and two short-form settlement notices for class members. Defendants’ data conclusively determines the majority of Settlement Class members’ eligibility. These individuals will automatically be sent a check without requiring any submission of a claim form or any other affirmative action on their part. For certain other class members, the data does not allow conclusive linking of individuals with job titles. However, the data does contain last-known mailing addresses and total compensation. Thus, we drafted different short-form and long-form Notices to these class members explaining the process for participating in the settlements, including providing their job title(s) to the Notice Administrator through an electronic claim form on the website.

21. In addition to setting forth the claims process, we worked to ensure that all of the Notices clearly described the nature of the action, both of the proposed settlements, the definition of the Settlement Class, the legal issues, Settlement Class members’ right to enter an appearance through an attorney, Settlement Class members’ right to exclude themselves from the Settlement Class, the time and manner for requesting exclusion, the binding effect of a class judgment, the scope of releases, and Settlement Class Members’ right to object to the settlements. The Notices also state the date and time of the fairness hearing, the formula for calculating each Settlement

Class member's recovery, and information about the attorneys' fees and expenses and class representative service awards that will be requested.

22. Along with Mr. Harvey, I appeared and argued on behalf of the Settlement Class at the March 18, 2020 telephonic hearing on the motion for preliminary approval of the settlements. Thereafter, Fine Kaplan was involved in all aspects of drafting and helping to set up the website for this matter and ensuring that Notice was sent out on April 9, 2020 as required by the Court's Order preliminarily approving the settlements. We, along with Lieff Cabraser and KCC, are now working to answer any questions that class members may have about the Notice, claims process or settlements.

23. Summary of Time and Expenses. During the course of this litigation, the Firm performed 3,818.10 hours of work in connection with this litigation. Based upon the current hourly rates charged by the Firm, the total lodestar value of the time is \$2,480,046.50. Attached as Exhibit A is a chart that indicates the attorneys and paralegals at the Firm who worked on this litigation, the number of hours worked, and their respective lodestar values and hourly rates. Exhibit A was prepared from contemporaneous, daily time records regularly prepared and maintained by the Firm.

24. The rates set forth in the lodestar calculation are the Firm's current billing rates. The rates range from \$725 - \$950 for partners; \$550 - \$625 for associates; \$475 - \$575 for of counsel; and \$330 for paralegals. The Firm's rate structure is paid to our firm by hourly-paying clients and has been approved by numerous courts in class actions. *See, e.g., In re Navistar MaxxForce Engines Marketing, Sales Practices and Products Liability Litig.*, Master Case No. 1:14-cv-10318 (N.D. Ill. Jan. 21, 2020); *In re Capacitors Antitrust Litig.*, No. 17-md-2801, 2018 WL 4790575, at \*6 (N.D. Cal. Sept. 21, 2018); *In re Lithium Ion Batteries Antitrust Litig.*, MDL



No. 2420, 2018 WL 3064391, at \*2 (N.D. Cal. May 16, 2018); *In re Urethane Antitrust Litig.*, MDL No. 1616, 2016 WL 4060156, at \*7 (D. Kan. July 29, 2016); *In re Air Cargo Shipping Services Antitrust Litig.*, MDL No. 1775, 2015 WL 5918273, at \*6 (S.D.N.Y. Oct. 9, 2015); *Standard Iron Works v. ArcelorMittal*, No. 08-C-5214, 2014 WL 7781572, at \*2 (N.D. Ill. Oct. 22, 2014); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at \*3 (E.D. Pa. June 2, 2004); *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998).

25. All of the services performed by the Firm in connection with this litigation and described above were reasonably necessary in the prosecution of this case. There has been no unnecessary duplication of services for which the Firm now seeks compensation. In addition, Fine Kaplan and Lieff Cabraser reviewed the time and expense reports of the other Plaintiffs' counsel who had been assigned work in this case.

26. During the course of this litigation, the Firm incurred expenses in the sum of \$20,922.06. These expenses were reasonably and necessarily incurred in connection with this litigation and are summarized in the chart attached as Exhibit B. The expenses incurred are reflected on the books and records of the Firm. These books and records are prepared from checks and expense vouchers that are regularly kept and maintained by the Firm and accurately reflect the expenses incurred.

27. The Firm has not received any compensation for the services rendered on behalf of the Class, and any such compensation is wholly contingent on the Court's approval of class counsel's motion for attorneys' fees. The Firm has devoted substantial time and resources to this matter and for that reason has forgone other legal work for which it would have been compensated.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, and that this Declaration was executed on May 4, 2020.

*/s/ Roberta D. Liebenberg*

Roberta D. Liebenberg

# **Exhibit A**

<b>In Re Railway Industry Employee No Poach Antitrust Litigation</b>				
<b>Fine, Kaplan and Black, RPC</b>				
<b>Time Summary</b>				
<b>Case Inception through March 31, 2020</b>				
<b>Attorney/Paralegal</b>	<b>Status</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Lodestar</b>
Liebenberg, Roberta	P	\$ 950.00	480.9	\$ 456,855.00
Dever, Gerard	P	\$ 775.00	780.90	\$ 605,197.50
Pessin, Adam	P	\$ 725.00	244.10	\$ 176,972.50
Russell, Mary	A	\$ 625.00	89.70	\$ 56,062.50
Momblanco, Ria	A	\$ 625.00	208.40	\$ 130,250.00
Khan, Jessica	A	\$ 550.00	156.50	\$ 86,075.00
Larsen, Robert	A	\$ 575.00	1,110.40	\$ 638,480.00
Borgia, Joseph	A	\$ 475.00	576.40	\$ 273,790.00
Blakeslee, Nancy	PL	\$ 330.00	161.00	\$ 53,130.00
Hufnagel, Susan	PL	\$ 330.00	8.80	\$ 2,904.00
Katzman, Allyson	PL	\$ 330.00	1.00	\$ 330.00
<b>TOTALS</b>			<b>3,818.10</b>	<b>\$ 2,480,046.50</b>

## **Exhibit B**

<b>In Re Railway Industry Employee No Poach Antitrust Litigation</b>	
<b>Fine, Kaplan and Black, RPC</b>	
<b>Expense Summary</b>	
<b>Case Inception through March 31, 2020</b>	
<b>DESCRIPTION</b>	<b>CUMULATIVE TOTAL</b>
Commercial Copies	\$ 46.92
Internal Reproduction/Copies	\$ 4,775.60
Court Fees (filing costs, etc.)	\$ 635.00
Computer Research (Westlaw)	\$ 9,386.72
Telephone Conference	\$ 319.96
Postage/Express Delivery/Messenger	\$ 41.57
Air Transportation	\$ 3,640.29
Ground Transportation	\$ 429.39
Meals	\$ 253.43
Lodging	\$ 975.52
Luncheon Meeting	\$ 174.96
Mediation Meeting	\$ 26.00
Pacer Research	\$ 216.70
<b>TOTAL EXPENSES</b>	<b>\$ 20,922.06</b>