

Seinfeld v Robinson

2001 NY Slip Op 30031(U)

March 8, 2001

Supreme Court, New York County

Docket Number: 0022304/2304

Judge: Stephen G. Crane

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. STEPHEN G. CRANE

PART 56

Justice

Seinfeld

INDEX NO. 22304/90

- v -

MOTION DATE 8-7-00

Robinson

MOTION SEQ. NO. 008

MOTION CAL. NO. 121

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

J.S.C.

DATED: _____

Dated: MAR 08 2001

STEPHEN G. CRANE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. STEPHEN G. CRANE

PART 56

Justice

Seinfeld

INDEX NO. 22304/90

MOTION DATE 8-1-00

- v -

Robinson

MOTION SEQ. NO. 009

MOTION CAL. NO. 117

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE

DATED: _____

J.S.C.

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE ...008...

Dated: MAR 08 2001

STEPHEN G. CRANE
NON-FINAL DISPOSITION

Check one: FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 56

-----X
FRANK DAVID SEINFELD, and HAROLD SACHS,
Derivatively and on Behalf of AMERICAN
EXPRESS CO.,

sh

Plaintiffs,

-against-

JAMES D. ROBINSON, III, HARRY L.
FREEMAN, ANNE L. ARMSTRONG, HENRY A.
KISSINGER, WILLIAM G. BOWEN, DREW LEWIS,
ALDO PAPONE, ROGER S. PENSKE, DAVID M.
CULVER, CHARLES W. DUNCAN, JR., ROBERT
V. ROOSA, RICHARD M. FURLAND, F. ROSS
JOHNSON, RAWLEIGH WARNER, JR., JOSEPH
H. WILLIAMS, VERNON E. JORDAN, JR.,
FRED M. KIRBY, II, GEORGE M.C. FISHER,
BEVERLY SILLS GREENOUGH, and FRANK P.
POPOFF,

Index No.:
22304/90
Mot Seq. 008
#121 of 8/7/00
Mot Seq. 009
#117 of 8/1/00

Defendants,

-and-

AMERICAN EXPRESS CO.,

Nominal Defendant.

-----X

A P P E A R A N C E S

Attorneys for Plaintiffs

Stockholder-Objectant

Abbey, Gardy & Squitieri, L.L.P.
212 East 39th Street
New York, NY 10016
By: Arthur N. Abbey, Esq.
Judith L. Spanier, Esq.

William C. Rand, Esq., Pro Se
1150 Fifth Avenue
New York, NY 10128

And

Wechsler Harwood Halebian &
Feffer LLP
488 Madison Avenue
New York, NY 10022
By: Robert I. Harwood, Esq.
Daniella Quitt, Esq.

Stephen G. Crane, J.

Plaintiffs move (009) to reject in part and confirm in part the report dated May 24, 2000, (the "Report") of Judicial Hearing Officer ("JHO"), Hon. Martin Evans, so as to increase the amount for their attorneys' fees to \$3.5 million and to recover their entire expenses of \$227,607.73 to the date of the settlement hearing and an additional \$87,003.50 since then.

William C. Rand ("Rand"), the objecting stockholder, moves (008) likewise, to confirm in part and reject in part the Report to reduce the fees recommended to \$184,375 and the expenses to \$40,107.84.

I. Background

The facts have been detailed in Seinfeld v Robinson (172 Misc 2d 159 [Sup Ct, NY County 1997], revd, 246 AD2d 291 [1st Dept 1998]), and in the JHO's Report.

On February 3, 1999, this court directed a reference to hear and report on: (1) the value of the benefit to Amex of plaintiffs' recovery on its behalf, and (2) the amount of attorneys' fees and disbursements to be paid to plaintiffs' counsel. This order was affirmed in a memorandum decision stating in part: "While we clearly found [on the prior appeal, 246 AD2d 291] that a substantial benefit was conferred on the subject corporation, the referral was not improper since, if nothing else, the referral serves as a reminder that a factor in assessing the amount of the fee to be awarded is the degree to which plaintiffs' attorneys' services benefitted the

corporation, and that such benefit must therefore be weighed and evaluated, even if unquantifiable (see, United Operating Co. v. Karnes, 482 F Supp 1029, 1031, 1032).” -AD2D-, 715 NYS2d 404, 405 (1st Dept 2000).

JHO Evans held hearings on January 14 and 27, 2000, February 9, 2000, and May 22, 2000. Three firms testified at the hearing: lead counsel for plaintiffs, Abbey, Gardy & Squitieri (“Abbey”), Wechsler Harwood Halebian & Feffer (“Wechsler”), and Milberg Weiss Bershad Hynes Lerach (“Milberg”). The other firms submitted affidavits received in evidence. An expert for the plaintiffs also testified.¹

After the hearing, JHO Evans issued the Report and filed it without the transcripts of testimony. The Report recommended applying a blended compensation rate averaging \$353 per hour embracing the rates in effect from 1990 through 1996. JHO Evans recommended that the court apply this rate to 2,500 hours, the time he found the matter should reasonably have required. He calculated total fees of \$881,110² to be reduced by time spent on unnecessary duplication of effort (the amount of which he did not specify). He then increased the rate to \$400 per hour “for the fact that the case was taken on a contingency basis” and derived a recommended fee of \$1,000,000, with interest from February 1, 1997. He recommended

¹ Plaintiffs sought \$3,185,388.77 in fees incurred since the inception of this case through February 8, 2000. This represents a lodestar amount of \$2,659,293.75 for 7,524.45 hours of work, multiplied by 1.19.

² Arithmetically, the figure should have been \$882,500.

reimbursement of expenses without those incurred in the fee-seeking phase and those incurred by one firm for the unsuccessful Federal prosecution. The net of these was \$203,681.32.

II. Timeliness of Rand's motion

Plaintiffs' attorneys aver that the first they learned that the JHO had filed his Report was on July 11, 2000 when they received a copy of Rand's motion. Plaintiffs contend that Rand's motion is untimely because he implicitly waived the requirement that the transcript be filed with the Report. Therefore, they imply that the time for Rand's motion ran from May 24 when the Report was filed without exhibits and transcripts. Plaintiffs overlook the danger to their own motion in making their untimeliness argument.

Uniform Rules--Trial Courts § 202.44(a) prescribes that the JHO or referee appointed to hear and report give notice to each party that his report has been filed together with the transcript and exhibits. This could not have occurred at bar because JHO Evans did not file the transcript and exhibits. Plaintiffs are given 15 days after such notice to make a motion to confirm or reject failing which the "defendant" has 30 days after notice of such filing to so move. CPLR 4320(b) provides that, unless otherwise stipulated, a transcript of the testimony, together with the exhibits or copies thereof, shall be filed with the report. The Report, without the transcript or exhibits, was filed on May 24, 2000. Rand's motion is dated July 10, 2000. There is no indication that the parties stipulated to excuse filing the transcript and the exhibits with the

Report. Rand did not order the transcript. Plaintiffs' attorneys provided the court with the transcript and exhibits.

Since no transcript or exhibits were filed with the Report, the deadline to file a motion did not begin to run and Rand's motion was timely filed. The same reasoning applies to plaintiffs' motion dated July 24, 2000.

III. The Settlement's Benefits To Amex

Both sides disagree with the JHO's finding of the extent to which the settlement of the derivative suit benefitted Amex. Plaintiffs argue that they should receive all of the attorneys' fees they seek because the harm to Amex from the Safra affair was great, and was greatly remedied by Amex's adoption of the Resolutions. Rand argues that the Resolutions conferred minimal benefits on Amex, and that the attorneys' fees should be commensurately reduced.

At the hearing, plaintiffs' expert on corporate governance, Professor Ted J. Fiftlis, testified about the negative effect that the Safra affair had on Amex's reputation, and the subsequent positive effect of the Resolutions. In Professor Fiftlis' opinion, the publicity about the Safra affair was responsible for a drop in the market value of Amex shares of between \$150 million and \$650 million. Yet, Professor Fiftlis admitted that he was not a securities fraud damages expert. JHO Evans commented that the negative publicity might have caused some loss to Amex shares but that too many other factors might have accounted for this. JHO Evans observed that plaintiffs had not adduced any evidence of

increases in share value at or near the time of the settlement to support this market theory of benefit.

Instead, JHO Evans valued the benefit of these short term resolutions on the costs to Amex of the Safra affair because they would prevent future damages of a similar nature.³ These consisted of \$1 million paid to Greco, \$8 million donated to charity and other related costs. The total approximates \$15 million. The JHO then derived a net benefit⁴ from the Resolutions measured as one third of the total monetary cost to Amex of the Safra affair. This one-third amounted to \$5 million. The difficulty with this determination is that it is based entirely on speculation. There is nothing in the report or in the evidence to explain how the one-third discount was derived.

Fundamentally, JHO Evans piled one speculation atop another to reach his result based on value of the benefit of these Resolutions. There is no logic or evidence that would measure the benefit of a Resolution with a four year life designed to prevent a recurrence of

³ Judge Evans rejected Rand's argument that the Resolutions mirrored earlier proposals of the Audit Committee on the ground that the Appellate Division had already diminished the significance of the proposals in contrast to the Resolutions. Seinfeld v. Robinson, 246 AD2d at 299.

⁴ Part of his consideration of this net benefit stemmed from certain palliative measures recommended by the Audit committee that Judge Evans asserted "would most likely have been adopted." These he found in Exhibit 13, not received in evidence, and Exhibits 18 and 19 dated July 1990 and February 4, 1992. It is unknown whether these references are to the same earlier proposals of the Audit committee that the Appellate Division found insignificant. See fn 3, supra.

the wrongdoing that characterizes the Safra affair based on the cost to Amex of rectifying the wrong done to Safra. Moreover, there is a public policy concern militating against such a valuation: The corporation for whose benefit the derivative action is brought will be forced to pay double for settling the initial impropriety. This might very well discourage settlement of the original claim in preference to full scale litigation. Beyond this concern, there is no logic in valuing these resolutions on the basis of the cost of settling the Safra affair any more than on the loss on the Shearson investment. Finally, Judge Evans included in his basic \$15 million cost of the Safra affair the donation of \$8 million that, as the Appellate Division observed, was "already earmarked for charitable contributions by Amex." 246 AD2d at 293. Eliminating this sum yields a net cost of the Safra affair of only \$7 million one third of which would amount to \$2.33 million-less than half the figure that the JHO's speculation yielded.

A. Burden of Proof

While the JHO did not discuss the burden of proving plaintiffs' entitlement to a fee including the value of the "substantial benefit" their settlement bestowed on Amex, it is appropriate to observe that the burden does rest on plaintiffs. Hensley v. Eckerhart, 461 US 424, 437 (1983); Ragin v. Harry Macklowe Real Estate Co., 870 F.Supp. 510, 515 (SDNY 1994); but see, Matter of Cohen (Four Way Features), 168 Misc 2d 91, 93-94 (Sup. Ct. NY Cty, 1995) [Crane, J.], aff'd, 240 AD2d 225 (1st Dept 1997) [ascribing to

the court rather than either party the burden of establishing the fair value of shares pursuant to BCL §1118 in a corporate dissolution proceeding].

B. Resolution I

Resolution I applied to outside consultants/investigators hired at a cost of \$150,000 or more per engagement. Resolution I did not apply to investigative services relating to fraud in connection with credit cards, traveler's checks, lending or other businesses, background checks for employment or promotion decisions, and investigative services rendered under the direction of outside legal counsel.

The record reveals that, beginning in 1989, Amex adopted a policy regarding outside services and consultants which was modified several times. The latest version of the policy in the records (Exhibit 41) is dated July 1995. It required that a particular request form be completed whenever outside services or consultants were retained at a cost exceeding \$25,000, whether per consultant or per project.

The difference between Resolution I and the policy that the company already had in place at the time of the settlement was that the Resolution applied to consultants costing \$150,000 and more, and included provisions regarding the general counsel, the internal audit department, and compliance with the Code of Conduct. Plaintiffs argue that the Resolution would have prevented Greco's actions that led to the Safra scandal. Rand has pointed out that

Resolution I could easily be circumvented because it does not apply to investigative services hired by outside legal counsel or in regard to "other businesses." The latter phrase could be interpreted to take in any kind of outside consulting at any cost.

Rand argues that the Resolution, which applies to payments of \$150,000 and up, would not have been applied to Greco, as he was paid in installments of \$30,000 or less. Professor Fiflis argues that the Resolution would have alerted the company to Greco because an auditor would have noticed the multiple payments to a single investigator (Exhibit U, affidavit of Professor Ted J. Fiflis, p. 7).⁵ But, under the Amex policy, all single payments of more than \$25,000 would be examined. The Amex policy obviates the need to speculate on whether an auditor would notice multiple payments to the same person.

C. Resolution II

Resolution II provided that the company would not acquire more than 50% of the voting power of any outstanding voting stock of an investment banking business unless such acquisition was approved by a majority of the outside directors. Rand points out that the votes of the outside directors guarantee nothing, as they can easily authorize wrongdoing. Plaintiffs argue that Resolution II would prevent future improvident acquisitions. The testimony at the

⁵ This expert speculation fails to account for the circumstance in the Safra affair itself: There was no alarm sounded back in the 1980's by the auditor who "would have noticed the multiple payments to a single investigator," Greco.

hearing with respect to Resolution II, and there is little of it, is even more speculative than that with respect to Resolution I. There is no evidence to show that the adoption of Resolution II was instrumental in restoring Amex's reputation or its stock prices.

D. Summary

Nothing in the record supports JHO Evans' finding that the value of the Resolutions would extend beyond their four-year expiration date.⁶ Rather, the evidence indicates that the Resolutions conferred minimal benefits on Amex.

This leaves the court with a void in valuing the "substantial benefit" that is an important element in quantifying plaintiffs' claim for attorneys fees. The Appellate Division seems to indicate the path this court is asked to follow in fixing these fees. It has twice referred to United Operating Co. v. Karnes, 482 F. Supp. 1029 at 246 AD2d at 300 and in affirming the order directing the reference to hear and report. Indeed, the opinion at 246 AD2d 291, 300 stated "The Karnes court, presented with a fee request for \$125,000, awarded counsel \$40,503.18. The benefit conferred in

⁶ He said: "While the resolutions are only in effect for 4 years, they will have an impact on the governance of this Corporation for many years into the future, even if they were not to be extended. Corporate culture and tradition has a way of continuing itself, and a failure to follow the traditions expressed by these Resolutions would not be considered proudly by the many distinguished and responsible directors of the corporation." Not only is this sentiment undermined by the Appellate Division's opinion at 246 AD2d 291, 298 ["The motion court viewed this benefit as of little value since a 'reoccurrence ... is unlikely'....We disagree."], but JHO Evans' optimistic observation finds no support in the record.

Karnes is analogous to the resolutions adopted in this case."

[Emphasis added.] The Karnes court awarded 32.4% of the fee requested.

IV. Hearsay Objections

At an early stage of the proceeding, the JHO ruled that it was not necessary for all of the attorneys to testify at the hearing. This was done in order to reduce the expenses and inconvenience of the attorneys and the parties, and because some of the attorneys were in other states. Rand was given the option of deposing a certain number of the attorneys and having the others appear at the hearing. Rand deposed only one attorney, who also testified at the hearing. Over Rand's hearsay objections, the affidavits and time records of the attorneys who did not testify at the hearing were received into evidence.

Rand has raised several factual issues with regard to the attorneys' time records, which, if he had raised them in an affidavit opposing the attorneys' affidavits on a motion, would have entitled him to a hearing with live testimony (see, Bankers Federal Savings Bank FSB v. Off West Broadway Developers, 224 AD2d 376, 378 [1st Dept 1996]). A hearing was ordered in this case. This required that testimony be taken.

A deposition is a disclosure device and with respect to disclosure, the role of the court is merely supervisory; it does not include ordering a party to take a deposition (Caroll v. Gammerman, 193 AD2d 202, 205 [1st Dept 1993]). A deposition is not a substitute

for testimony in open court, except under certain limited conditions (see, CPLR 3117, governing the use of depositions at trial).

This is not a case where a party chose to take a deposition and later discovered that the deponent was unavailable for trial. The JHO determined beforehand that some of the attorneys need not appear at the hearing, even though seven of the attorneys' firms are situated in New York, and the eighth, headquartered in Pennsylvania, has been performing work in New York. There are no exceptional circumstances to warrant the absence of the attorneys from a hearing designed to determine their fees.

Where affidavits have been allowed in lieu of live testimony on direct examination, the adversary's right to cross examination was preserved in Campaign for Fiscal Equity v State of New York, 182 Misc 2d 676 [Sup Ct, NY County 1999]; Siegel, NY Prac §396 (3d ed. August 2000 Pocket Part, p. 25). There, my brother, Justice DeGrasse, provided that the affiant would swear in open court to the truth of his/her affidavit before undergoing cross-examination. Despite, the large number of witnesses, the court emphasized the importance of each one appearing at trial (id. at 677-678). This principle was overlooked in the reference under scrutiny at bar.

The use of depositions at trial must be carefully restricted because the right to cross-examine is fundamental. It ensures the opposing party a chance to present its side and the fact-finder an opportunity to discover the truth (State of New York v. Metz, 241 AD2d 192, 199 [1st Dept 1998]).

Therefore, the time records of the attorneys who did not testify should not have been admitted in evidence and should be disregarded.

V. Fees For Time Spent Seeking Fees

In deciding whether to award fees for time spent by counsel in the fee application process, courts draw a distinction between two kinds of cases (Savoie v. Merchants Bank, 166 F3d 456, 461 [2nd Cir 1999]). In one class of cases, counsel is not entitled to fees for seeking fees where they will be drawn from a common fund. This is based on the theory that the fund was created for the benefit of a group or class, has already been diminished by an award of fees, and should not be diminished by an additional award (id.). In the other category, an award of fees for seeking fees has been allowed under statutes where the wrongdoer, and not the plaintiffs, are paying the fees (id.).

In this case, the settlement did not create a common fund or obtain a recovery of any kind for the plaintiffs, and conferred very slender benefits on Amex. Therefore, the attorneys here will not be allowed to recover fees seeking fees. In that respect, the Report will be confirmed.⁷

⁷ Judge Evans reported: "The general rule is that hours spent in requesting fees, or in establishing the amount thereof, is not compensable, and I see no reason in this case to recommend the adoption of any different rule." Report, p. 5. Thus, he disqualified 3,622.05 hours of the grand total of 6,744.3 hours for all law firms.

VI. Hours Billed And Hourly Rates

The Report stated that the total number of hours reasonably necessary to bring about the result in this action was 2,500 hours. (Report, p. 5). JHO Evans did not supply his calculations in this respect. He did observe generally that there had been unreasonable duplication among firms. (Id., p. 9). The Report also recommended a blended hourly rate of \$353 based on time charges in effect at the times the services were actually rendered.⁸ He elevated this rate to an arbitrary and unexplained \$400 per hour due to the contingent risk in the representation. He believed that an award of interest at the agreed rate of 5.11% would compensate for the use of historic rates rather than those in effect today.

The party seeking fees has the burden of establishing their reasonableness (Gutierrez v. Direct Marketing Credit Services, 267 AD2d 427, 427-428 [2nd Dept 1999]). The attorneys here have failed to address the JHO's and Rand's numerous objections to their hourly rates, time spent on legal work, duplication of effort, etc. They have not met their burden. The burden is on the fee applicant to produce satisfactory evidence that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation (Savoie v. Merchants Bank, supra, 166 F3d, at 463). In addition to

⁸ Based on 2,500 hours Judge Evans derived a grand total of \$881,110. See, fn. 2, supra.

looking at prevailing market rates, the Court may rely on its own knowledge of comparable rates charged by other lawyers in the jurisdiction when setting rates (Williams v. New York City Housing Authority, 975 F Supp 317, 322 [SDNY 1997]).

In recognition of the excessive fees, the JHO reduced the post-settlement hours by 4,244.3 to 2,500. This figure cannot be used because it applies to all of the law firms, not just the ones that testified at the hearing. Therefore, the plaintiffs would suffer a double reduction if the fees of non-testifying firms are eliminated in addition to capping the remainder at 2,500 hours. Besides, this court has no way of discerning how the JHO derived this limitation.

The lodestar figure is calculated by multiplying the number of hours reasonably expended by the prevailing rates for the services provided (In Re Metropolitan Life Derivative Litigation, 935 F Supp 286, 294-295 [SDNY 1996]). Current rates may be used to compensate the plaintiff for inflation and loss of interest that had taken place between the time when the legal services were rendered and when the fees were awarded (New York State Association for Retarded Children v. Carey, 711 F2d 1136, 1152 [2nd Cir 1983]). However, the current rates need not be used in cases involving protracted litigation where the current inflated rates do not reflect accurately the loss attributable to delay (id.), and the JHO declined to use them.

Because he used past rates elevated for contingency, rather than current rates, the JHO allowed the attorneys 5.11% interest.

Generally, when current rates are used, interest is not allowed (Savoie v Merchants Bank, supra, 166 F3d at 464). "An award of interest on a lodestar fee calculated on the basis of current hourly rates would have resulted in overcompensation" (id., and see, Huntington Branch, NAACP v. Town of Huntington, 961 F2d 1048, 1049 (2nd Cir 1992). The attorneys here will be granted 32.4% of their pre-settlement fees, as shown by the chart in the footnote.⁹ The total fees for the three firms amounts to \$453,902.44. As recommended by Judge Evans, interest will be added to this figure at the rate of 5.11% from February 1, 1997.

VII. Adjustments To The Lodestar Figure

Once the "straight" lodestar is calculated, the court must consider whether an enhancement or decrease is warranted. The JHO adjusted the lodestar upwards to \$1 million by recognizing the contingent nature of the representation and selecting a \$400 per hour blended rate, but without explaining the reason for the amount of the increase. A multiplier may be applied to the lodestar based on certain less objective factors such as contingent risk, superior

⁹ Fees from the inception of the case through the settlement hearing in November 1996 at blended rate of \$353 per hour. Firms that testified at the hearing

<u>Firm</u>	<u>Hours</u>	<u>Lodestar</u>	<u>32.4%</u>
Abbey	1,287.25	\$454,399.25	\$147,225.36
Wechsler	1561.4	551,174.20	178,580.44
Milberg	1,120	395,360.00	128,096.64
Total	3,968.65	\$1,400,933.50	\$453,902.44

quality of representation, and results achieved (In Re Texaco Inc. Shareholder Litigation, 20 F Supp 2d 577, 590 [SDNY 1998]), reversed [due to lack of any "substantial benefit" and distinguishing Seinfeld v. Robinson, 246 AD2d 291], sub nom Kaplan v. Rand, 192 F3d 60 [2d Cir. 1999]). The use of multipliers should be subjected to a stringent determination where no common fund has been created and the non-monetary relief is not readily capable of valuation (id.). The court does not find that the case was complex enough or the results outstanding enough to warrant the application of any multiplier.

VIII. Expenses

With respect to pre-settlement expenses, Abbey seeks \$29,910.99, Wechsler, \$7,203.80; and Milberg, \$137,592.77. Out of Milberg's expenses, \$93,858.21 was paid to an investigative firm retained to investigate Greco's activities abroad that eventually found him in Europe and procured his release from prison. Milberg's hotel accommodations are billed at \$8,196.79, meals at \$1,026.57, and travel at \$13,487.86.

Abbey and Wechsler will be reimbursed all of their expenses. Milberg's expenses will be reduced to \$21,023.34, to reflect the failure to justify the trips and investigator. The total expenses amount to \$58,138.13.

Accordingly, it is

ORDERED that the motions are granted in part and otherwise denied; and it is further

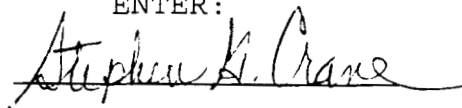
ORDERED that, as stated in this opinion, the Report is confirmed in part and rejected in part as follows: The JHO's recommendations of a 2,500 hours limitation; \$400 per hour rate; \$15 million value of the benefit divided by one-third based on the cost of the Safra affair; admission of hearsay affidavits; finding that the resolutions will have impact beyond four years; recommended fees of \$881,110 enhanced to \$1 million; recommended approval of expenses of \$203,681.32; and recommendation that there should be any increase to the lodestar figure for the contingent nature of plaintiffs' attorneys' retainer are rejected and the Report is otherwise confirmed; it is further

ORDERED that plaintiffs are awarded attorneys' fees of \$453,902.44 plus interest at 5.11% per annum from February 1, 1997 and expenses of \$58,138.13; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: **MAR 08 2001**

ENTER:



JSC

STEPHEN G. CRANE