

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE: CURRENCY CONVERSION FEE ANTITRUST LITIGATION)	MDL Docket No. 1409
)	
)	Master File No. 21-95
)	
This Document Relates To:)	
ALL ACTIONS)	
)	

**DECLARATION OF B. THOMAS FLORENCE
REGARDING OPTION 2 CLAIMS AND THE REFUND ALGORITHM**

DISTRICT OF COLUMBIA) ss.:

I, B. Thomas Florence, declare as follows:

1. I am President of Analysis, Research and Planning Corporation (“ARPC”), located at 1220 19th Street, NW, Suite 700, Washington, D.C. 20036.
2. ARPC was appointed as consultant to the Special Master on August 30, 2007 to assist him, the Claims Administrator, and Counsel in the design and development of claim options, forms, and notification procedures. The Parties subsequently requested ARPC to develop a mathematical formula (“algorithm”) to be used to calculate the value of the Option 2 claims based on claimants’ answers to a few simple questions.
3. ARPC prepared a Memorandum, dated July 15, 2008 (and attached as Exhibit 2 to Plaintiffs’ July 15, 2008 Status Report), that describes the purpose of the algorithm to be used for Option 2 claims and the methodology used to develop the algorithm, including likely outcomes and additional considerations concerning atypical claims.
4. The following sections describe (i) the Option 2 refund, (ii) the elements that comprise the algorithm or formula that will be adopted to calculate Option 2 refund

amounts (based on the prior analysis from ARPC's July 15, 2008 Memorandum noted above), and (iii) an estimate of the refund value of the Option 2 claims relying on claim data provided by the Claims Administrator.

Description of Option 2 Refund

5. The Option 2 refund is based on a 1% refund for typical foreign transaction activity using Visa, MasterCard and/or Diners Club credit, charge, or debit/ATM cards. Option 2 claimants answer a few questions concerning their frequency and purpose of travel during the class period (*see* Paragraphs 7 and 8 below). The algorithm sets the mathematical rules for determining refund amounts based on claimants' answers to these questions.
6. The Option 2 claim is offered as an alternative for those claimants who had greater than \$25 of foreign transaction fees (Option 1 claimants) but who did not want to compile the information necessary for the more detailed Option 3 claim form. The Option 2 refund procedure is intended to estimate travelers' "*typical foreign transaction activity*" as described in the claim form and accompanying instructions. It is not intended to determine Option 2 claimants' *actual* foreign transaction activity.
7. Official government travel and tourism sources provide estimates of almost all international travel by U.S. residents. These travel data describe four general categories of "travel purposes" that each have distinctive spending patterns: (i) Business; (ii) Visiting Friends and/or Relatives ("VFR"); (iii) Vacation/Leisure; and (iv) Other. ("Other" travel includes travel for the purposes of study, military, religious pilgrimage, etc.) These distinctive empirical patterns were combined with

claimants' estimates of days spent traveling outside the U.S. for each purpose during the class period to estimate total foreign expenditures.

8. Option 2 claimants estimated the number of days they spent outside the U.S. for each of the four distinctive travel purposes noted above during the class period. Option 2 claimants further indicated for each of the four travel purposes whether their travel was Never, Rarely, Sometimes, Often, or Mostly.

Elements of the Algorithm

9. After examining actual claimant data and travel statistics, an algorithm was developed to calculate Option 2 refund amounts using the information provided by the Option 2 claimant (*i.e.*, the number of claimed travel days and the claimants' categorization of the four travel purposes identified on the Option 2 claim form). A summary of the algorithm that is recommended for calculating Option 2 refund amount is provided in this section. A detailed discussion of the data considered and the factors analyzed leading to the formulation described below can be found in ARPC's July 15, 2008 Memorandum, at pages 4-9.
10. The first step of the algorithm was to determine how to apportion each claimant's total reported travel days across the four travel purposes. To make this assessment, claimants' responses to frequency of travel for each purpose of travel were weighted so that more frequent travel purposes were assigned a higher weight than less frequent travel purposes. The weights range from zero for "Never" to four for "Mostly". For each claimant, the weights were totaled across the four purpose categories. The weight for each of the claimant's purposes was divided by the total of the claimant's weights to produce a percentage of total reported travel days to be

assigned to each category. The percentages were then multiplied by the total reported days to produce an estimated number of travel days for each purpose. An example of this procedure is provided in ARPC's July 15, 2008 Memorandum, at page 5.

11. The next step was to determine the average daily spending outside of the U.S. for each of the travel purposes. To calculate typical average daily spending amounts for U.S. resident travel outside of the U.S., an estimate was derived from empirical studies conducted by:

- U.S. Department of Commerce, Office of Travel and Tourism Industries
Survey of International Air Travelers;
- Statistics Canada; and
- Banco de Mexico and Sectur (Secretary of Tourism for Mexico).

12. Because the calculation of averages is sensitive to extreme values, and because Option 2 estimates were intended to reflect "typical" travel, daily spending amounts were reflected as median, rather than mean, daily spending amounts. A detailed discussion of this issue can be found in ARPC's July 15, 2008 Memorandum, at page 8.

13. Median estimates were further adjusted to eliminate spending that would not have incurred a foreign transaction fee from Visa, MasterCard, or Diners Club branded cards. The adjustments are:

- 100% of Travelers' Check spending was assumed to be spent outside the U.S.
- The share of credit card spending assumed to be due to "other cards" (e.g., American Express) was estimated to be approximately 22% and deducted to avoid overestimation of expenditures using Visa, MasterCard, or Diners Club branded

cards. "Other Cards" spending is estimated from The Nilson Report data on credit card market share from 1996 to 2006. The Nilson Report conducts research and publishes reports on consumer payment systems.

- Cash spent while traveling outside of the U.S. was estimated and deducted assuming that 75% of reported cash expenditures was spent outside the U.S. (See ARPC's July 15, 2008 Memorandum, at page 9.)

14. An applicable per-day credit/debit card foreign transaction amount for each travel purpose, adjusted for medians, Travelers' Checks, other cards, and cash transactions (as indicated in Paragraphs 12 and 13 above), was determined. The typical per-day foreign transaction amount for each category is:

- \$15 Visiting Friends or Relatives
- \$20 Leisure
- \$82 Business
- \$19 Other

15. For each claimant, the estimated number of days spent traveling for each of the four travel purposes was multiplied by the typical daily spending estimate for the appropriate travel purpose. The four resultant amounts were then summed to derive an estimated total foreign transaction amount, using applicable credit/debit cards, for the claimant.

16. For each claimant, the Option 2 refund amount was determined using the total foreign transaction amount (as calculated per Paragraph 15 above) multiplied by 1%. If the result was less than the minimum refund amount for Option 1 claims, then the algorithm adjusted the result to the minimum Option 1 refund amount.

17. At the request of the Parties, ARPC examined alternative methods to address problems of Option 2 claims that reported atypical numbers of travel days. Option 2 refunds were designed to reflect typical foreign travel; extensive travel or living abroad results in atypical spending totals. Alternate methods of discounting atypical travel were explored. (For a detailed discussion of the alternatives considered see ARPC's July 15, 2008 Memorandum, at pages 10-11.) Upon consultation with and recommendation of Counsel and the Special Master, a discounting model was adopted to address the impact of atypical travel days. The model applies an increasing discount to travel days in excess of the median number of days reported by claimants. Each additional day in excess of the median is discounted more than the previous day in a linear fashion. The maximum discount occurs at day 1,000, and all days in excess of 1,000 receive the maximum discount. However, no travel day is discounted to less than 10% of the full daily refund value.

18. On November 7, 2008 Heffler, Radetich & Saitta provided ARPC with three files. These files were represented to be claimant data as of November 6, 2008. The data include the results of the removal of duplicate claims and audit procedures as of that date. The files provided to ARPC contain:

- Claim form responses of 2,601,298 Option 2 claimants. This information includes a unique identifier (Claim ID number) for each claimant, total number of days of travel reported, a record for each indicated purpose of travel, and the frequency of each reported purpose of travel.
- The Claim ID numbers of 4,694 Option 2 claimants who were sent audit letters but have not responded.

- The Claim ID numbers of 1,648 Option 2 claimants who responded to their audit letters and whose audits were completed.
- The Claim ID numbers of 1,107 Option 2 claimants who responded to their audit letters and whose audits were in progress.

19. The calculation using the algorithm for the 2,601,298 Option 2 claimants, as adjusted by the discounting method described in Paragraph 17 above, yields an estimated refund value of \$142,694,000. For claims that had completed the audit process, the allowed number of days was included. For claims that had not yet responded, or that had not completed audit, a discount of 12.64% of days was applied. The discount was based on trend analysis of completed audits provided by the Claims Administrator.

20. The estimate in Paragraph 19 represents a maximum estimated refund value. The minimum estimated refund value was calculated by assuming that all claims that had not responded to the audit by November 6, 2008 (the date of the Option 2 data provided to ARPC) will never respond and will be disallowed. Audit claims that were received but had not yet completed audit were reduced by 12.64% of reported days, as described in Paragraph 19. Application of the algorithm with these assumptions yields an estimated refund value of \$141,367,000.

21. The maximum and minimum results reported above provide a range of estimates of refunds for “typical” spending by Option 2 claimants, based on the data provided by the Claims Administrator. The assumptions used are reasonable and supported by empirical research. However, the level of finality of the estimated refund value of Option 2 claims is dependent on the level of finality of the data provided.

22. The Revised Plan of Administration and Distribution provides for a tiered distribution calculation. The first reduction is for all claims greater than \$225 and these claims would be reduced to the greater of 50% of the calculated payment or \$225. If the Net Settlement Fund still does not have enough funds then a second reduction would occur. First, any payment amount after the first reduction described above that was reduced by less than 50% would be reduced to 50% of the original calculated value and any amount between \$25.01 and \$224.99 not previously reduced would be reduced to the greater of 50% of the calculated payment or \$25. Based on the estimated maximum and minimum refund values in paragraphs 19 and 20 above, the estimated maximum and minimum reduced refund amounts after the tiered distribution calculations are \$92,878,000 (maximum) and \$92,214,000 (minimum).

23. I have discussed and reviewed results of the algorithm with the Special Master, Claims Administrator, and Counsel who all approve of the methodology.

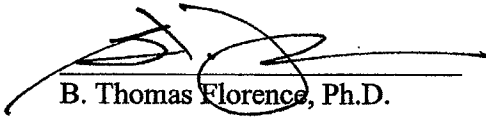
Recommendations and Qualifications

24. I am a *summa cum laude* graduate of the University of Kentucky having earned a B.B.A., in 1968. I earned a Ph.D. from Michigan State University in 1981. I have over thirty years of experience in management consulting and research, as well as significant experience in litigation consulting, class action case management, and large-scale statistical modeling. I have been qualified as an expert witness on issues regarding the estimation of the numbers and value of present and future claims.

25. The preparation of the algorithm performed for this case is within my area of expertise and conforms to accepted standards for similar work in other litigation. I recommend that the court accept the algorithm and order that it be applied to Option 2


claimants in a manner consistent with this Declaration.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 1st day of December, 2008, at the District of Columbia.


B. Thomas Florence, Ph.D.



JENNIFER REGAN
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 14, 2013

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 1st day of December

Notary Public, D.C.
My commission expires August 14, 2013