

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STEPHEN SULLIVAN, WHITE OAK FUND LP,
CALIFORNIA STATE TEACHERS' RETIREMENT
SYSTEM, SONTERRA CAPITAL MASTER FUND, LTD.,
FRONTPOINT PARTNERS TRADING FUND, L.P., AND
FRONTPOINT AUSTRALIAN OPPORTUNITIES TRUST
on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS
CAPITAL INC., BNP PARIBAS S.A., CITIGROUP, INC.,
CITIBANK, N.A., COÖPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK B.A., CRÉDIT
AGRICOLE S.A., CRÉDIT AGRICOLE CIB, DEUTSCHE
BANK AG, DB GROUP SERVICES UK LIMITED, HSBC
HOLDINGS PLC, HSBC BANK PLC, ICAP PLC, ICAP
EUROPE LIMITED, J.P. MORGAN CHASE & CO.,
JPMORGAN CHASE BANK, N.A., THE ROYAL BANK OF
SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE SA, UBS AG AND
JOHN DOE NOS. 1-50,

Defendants.

Docket No. 13-cv-02811 (PKC)

ECF Case

DECLARATION OF GARY MCGOWAN, ESQ.

I, Gary McGowan, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a person of the full age of majority and, if called to testify, am competent to testify as to the facts set forth herein.
2. I am the agreed-upon mediator in the above-captioned matter involving Plaintiffs (by and through Lovell Stewart Halebian Jacobson, LLP and Lowey Dannenberg Cohen & Hart, P.C. hereinafter referred to as “Class Counsel”) and Defendants HSBC Holdings plc and HSBC Bank plc (collectively, “HSBC”) (by and through “HSBC Counsel”). I submit this Declaration in connection with the pending Motion for Preliminary Approval of the Settlement reached as a result of the mediation process.
3. Before becoming an arbitrator and mediator, I was in private practice and had significant experience on antitrust matters, including my handling several antitrust class actions as a partner with Susman, Godfrey & McGowan. I have acted as an independent arbitrator and mediator for over 25 years, retained to serve in a wide range of disputes, including securities and shareholder derivatives suits, class actions (price-fixing, securities fraud, and others), intellectual property suits, and energy cases. I have mediated over 2,700 matters, and arbitrated over 140 matters (AAA, CPR, ICC, ICDR, UNCITRAL, AHLA, and ad hoc), including 22 international arbitrations. Of these matters, I have been the chair of panel or solo arbitrator 100 times.
4. A copy of my curriculum vitae is attached hereto as Exhibit A.
5. By April 2016, Class Counsel and HSBC Counsel asked me if I would agree to serve as a mediator in an agreed-upon, voluntary and confidential mediation process designed to secure a comprehensive settlement in the above-captioned matter involving Plaintiffs and HSBC. I agreed to do so with the full support and approval of both sides. A mediation budget and schedule were agreed upon, with the Declarant acting as the sole neutral mediator to assist the mediation participants in attempting to reach a comprehensive settlement of the dispute.

6. Prior to being retained by both sides, I had no prior knowledge or understanding of the facts of the dispute. During the course of the mediation, I acted as an independent, neutral mediator encouraging each side separately, and both sides together, to resolve their differences through strenuous, arms-length, contested negotiation. I supervised the entire process as the mediator.

7. In the course of the mediation process, commencing in April 2016 and concluding on May 2, 2016, I engaged in several telephone conversations and face-to-face conferences with the mediation participants, separately and together, in an effort to help the parties reach a successful mediated settlement.

8. At my request, Class Counsel and HSBC each provided me with a memorandum discussing the legal arguments that would be covered during the face-to-face meetings on May 2, 2016, including personal jurisdiction arguments and merits arguments. Class Counsel also provided me with a slide show describing Euribor and the intricacies of Plaintiffs' claims and estimated damages, and HSBC Counsel provided me with a slide show regarding their arguments.

9. At the face-to-face meetings on May 2, 2016, I met with representatives of both sides, heard from each side concerning background information about the litigation and its status, as well as each party's views as to the litigation risks and costs if a mediated settlement were not achieved. Each side also discussed with me in confidence what it saw as the outstanding issues and how those outstanding issues might be resolved. The settlement discussions were vigorous, contested, well informed, and arms-length. They involved highly experienced counsel representing both sides, including the General Counsel for the California State Teachers' Retirement System and a senior representative of HSBC. Both sides engaged in hard bargaining.

10. By the end of the May 2 meeting, the parties had reached an impasse. At that point, I made a mediator's proposal. On or about May 3, 2016, each side, responding separately and

independently, accepted the proposal. At my urging and direction, the mediation participants then engaged in direct negotiations to create a memorandum of understanding (the "MOU"). I understand that the parties executed the MOU on May 4, 2016, and, eventually, a settlement agreement.

11. It is my belief that the settlement reached between the parties at the mediation was the result of a fair, reasonable, and *bona fide* negotiation process involving sophisticated and capable counsel on both sides.

12. I further note that this settlement with HSBC, which is the second settlement in this multi-defendant litigation, may promote more settlements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2017
Houston, Texas



Gary McGowan

EXHIBIT A

McGOWAN

Arbitration and Dispute Resolution | National and International

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Resume Gary McGowan

Experience

Arbitrated over 135 matters (AAA, CPR, ICC, ICDR, and *Ad Hoc*). Examples:

- Energy, oil and gas.
 - co-generation agreements between refiner and co-generator (solo and chair)
 - gas processing agreements (solo)
 - steam supply contracts (solo and chair)
 - coal supply contract (chair)
 - chemical plant valuation (international)
 - contract dispute between oil/gas company and cryogenic plant concerning contract for gas-to-LPG conversion and LPG storage (chair; international)
 - refinery turnaround contracts (chair)
 - joint interest billing dispute regarding area of mutual interest (solo)
 - output contract between refinery and chemical buyer (international)
 - gas dedication dispute between transporter and producer
 - wireline services covenant not to compete
 - joint venture to develop offshore drilling platform project in South America (chair; international)
 - indemnity provisions in Master Services Agreement (chair)
 - oil and gas limited partnership dispute (international)
 - power producer claims against wind turbine manufacturer for allegedly defective turbine blades (international)
- Construction
 - semisubmersible production platform and mooring system -- engineering, procurement, and construction (international)
 - large apartment complex
 - major league baseball stadium
 - refinery expansion (solo)
 - underground electrical conduit and signal installation for state highway
 - large diameter pipe supplied for pipeline construction project -- alleged defects in manufacturing (international)
 - gas processing plant (solo)
 - pipeline delivery station (solo; international)
 - chemical plant -- engineering, procurement, construction (chair; international)
- Airline capacity purchase agreement (chair)
- Joint venture to develop medical device (solo)
- Contract for beach cleanup of massive oil spill (chair)

- Trade secrets -- computer software
- Healthcare industry (solo and chair)

Chair of panel or sole arbitrator in 98 matters.

Twenty-one international arbitrations (ICDR, ICC, UNCITRAL).

Extensive mediation experience (over 2,700).

Attorney for 40 years.

- 1973 to 1989 -- complex business litigation (founding partner at Susman, Godfrey & McGowan)
- 1990 to present -- arbitration and mediation

Education, Professional Qualifications, and Honors

J.D., University of Texas School of Law (1973); Associate Editor, Texas Law Review.

Fellow, Chartered Institute of Arbitrators (London) – FCI Arb.

Fellow, College of Commercial Arbitrators.

International Panel of Arbitrators, International Centre for Dispute Resolution (New York), a division of the American Arbitration Association.

Energy Arbitrators List, an international panel of energy industry arbitrators sponsored by the International Centre for Dispute Resolution.

Roster of Neutrals, American Arbitration Association; Commercial Panel, Large and Complex Case Panel, and Oil & Gas Panel.

Texas Panel of Distinguished Neutrals, International Institute For Conflict Prevention and Dispute Resolution ("CPR").

CPR's Energy, Oil and Gas Panel of Distinguished Neutrals.

Panel of Arbitrators, Hong Kong International Arbitration Centre.

Panel of Arbitrators, Singapore International Arbitration Centre

Institute for Energy Law Directory of Energy Arbitrators.

Panel of Arbitrators, Vienna International Arbitral Centre.

Panel of Arbitrators, Kuala Lumpur Regional Centre for Arbitration.

Board of Directors, Section of Alternative Dispute Resolution, State Bar of Texas.

2015, 2016, and 2017 editions of The Best Lawyers in America in Arbitration.

Best Lawyers' 2017 Arbitration "Lawyer of the Year" in Houston.

Corporate LiveWire 2016 Global Awards -- Arbitration in the Energy Sector.

Roster of Arbitrators, American Health Lawyers Association.

2012 Distinguished Counselor Award, Antitrust and Business Litigation Section, State Bar of Texas.

Lawdragon 500 --one of 500 best judges (public and private) in U.S.

Charter Member and Executive Committee, Texas Chapter of the National Academy of Distinguished Neutrals.

1990-present: speaker at CLE programs on arbitration and mediation -- over 35 presentations.

Texas Super Lawyer (*Texas Monthly*) for each of last ten years.

Selected by *Texas Lawyer* as one of five "Top Notch" neutrals in Texas.

Best Lawyers' 2014 Houston Mediation "Lawyer of the Year".

The International Who's Who of Commercial Mediation 2013 (WHO'S WHO LEGAL, London).

Fellow and Board Member, American College of Civil Trial Mediators.

Publications

"12 Ways To Achieve Speed and Efficiency in Arbitration"
Corporate Counsel (April 2013).

"Sanctions in US and International Arbitrations: Old Law in Modern Context"
Kluwer Arbitration Blog (October 2013).

"Don't Call It A Trial: What Litigators Should Know About Arbitration"
Houston Lawyer (July-August 2014).

Energy; Oil and Gas

Broad experience in oil and gas matters -- exploration, drilling, processing, transportation, and refining.

- royalty disputes
- surface damage, ground water, lease expiration, title disputes, etc.

- development/drilling obligations
- joint operating agreements (accounting for costs; reasonableness of costs and/or operator decisions; forfeiture of interests; etc.)
- drainage
- producer vs pipeline
- seismic data
- inter-refinery supply agreements – steam, electricity, and hydrocarbons
- co-generation agreements between refiner and co-generator
- area-of-mutual-interest agreements
- preferential rights
- override agreements
- farmout agreements
- refinery's economic loss due to pipeline failure
- gas processing agreements
- product supply agreements (take-or-pay; output contracts; requirements contracts; pricing issues; force majeure issues, etc.)
- trade secrets and patents concerning drilling technology
- wireline services
- semisubmersible drilling rig contract disputes
- lease disputes
- semisubmersible production platform – construction dispute; moor

Mediated over 300 oil and gas disputes. Arbitrated dozens.

August 2016