

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARVER, *et al.*,

Plaintiffs,

Case. No. 1:15-cv-10180-JPO-JLC

v.

BANK OF NEW YORK MELLON, *et al.*,

Defendants.

**DECLARATION OF JONATHAN G. AXELROD IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED
ON BEHALF OF BEINS, AXELROD, P.C.**

I, Jonathan G. Axelrod, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a shareholder in the law firm Beins, Axelrod, P.C., one of the ERISA counsel in this Action. I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto.

2. Beins, Axelrod, P.C. has its office in Washington, D.C. A copy of the Firm's resume is attached hereto as Exhibit C. The Firm focuses its practice on labor and employment law, including the representation of ERISA funds.

3. I personally rendered legal services and was responsible for coordinating and supervising the activity carried out by attorneys at Beins, Axelrod, P.C. in this Action. In its capacity as an ERISA Plaintiffs' Counsel in *Carver, et al. v. The Bank of New York Mellon*, Case. No.

No. 1:15-cv-10180-JPO-JLC, Beins, Axelrod contributed to this Action and performed work on behalf of and for the benefit of the Class.

4. I performed a range of services, including the location of Plaintiffs, the drafting and filing of the Complaint. I further participated in numerous discussions concerning litigation strategy and the filing of opposition to Defendants' Motion to Dismiss. I participated in depositions of four named Plaintiffs and in one deposition of a defendant's witness. I participated in numerous telephone conferences concerning settlement of the Action.

5. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys at Beins, Axelrod in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit A hereto. This chart (i) identifies the names and positions (i.e., titles) of the Firm's Timekeepers who undertook litigation activities in connection with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through April 3, 2019; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court.

6. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request.

7. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly

matters. Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in Washington, D.C. by attorneys of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements. The Firm has charged, and received, an hourly rate of \$525.00 in litigation involving fiduciary breach by a former trustee and service providers. This hourly rate has been approved by the courts in three prior class action ERISA matters: *Henriquez v. State Street Bank and Trust Company et al*, (D. Mass), Case No. 1:11-cv-12049-MLW and *Carver v. The Bank of New York Mellon*, Case No. 12 Civ. 9248 and *Fletcher v. The Bank of New York Mellon*, Case No. 14 Civ. 5496 (S.D. N.Y.). We believe that an increase to an hourly rate of \$600.00 is appropriate. The Firm does charge a lower rate to longstanding Fund clients in non-contingency matters and to its Union clients. To serve the public interest, the Firm has also charged reduced rates to individual employees with employment discrimination claims.

8. The total number of hours expended by Beins, Axelrod on this Action, from investigation through April 3, 2019 is 204.4 hours. The total lodestar for the Firm is \$122,640.00 all for attorney time.

9. In my judgment, the number of hours expended and the services performed by the attorneys at Beins, Axelrod were reasonable and expended for the benefit of the Settlement Class in this Action.

10. Beins, Axelrod's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

11. As set forth in Exhibit B, Beins, Axelrod has incurred a total of \$7,627.08 in unreimbursed expenses in connection with this Action from January 5, 2016 through April 3, 2019. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

12. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of the Firm's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 10th day of April 2019 in Washington, D.C.


Jonathan G. Axelrod

EXHIBIT A

FIRM NAME

Carver, et al v. BNY Mellon, et al, 15-cv-10180

Inception thru April 12, 2019

Name	Total Hours	Rate	Lodestar
Attorneys			
Jonathan Axelrod	204.4	\$600.00	\$122,640
Attorney Total	204.4		\$122,640

EXHIBIT B

EXPENSE REPORT**FIRM NAME: BEINS, AXELROD, P.C.****REPORTING PERIOD: INCEPTION TO April 3, 2019**

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	
Internal Reproduction/Printing (includes 77,735 pages @ \$0.09/page)	
Court Fees (Filing costs etc.)	\$10.00
Court Reporters/Transcripts	\$2,525.98
Computer Research	\$18.16
Electronic Database	
Teleconferences/Fax	\$31.66
Postage/Express Delivery/Messenger	
Experts/Consultants	
Witness/Service Fees	
Meals, Hotels and Transportation	\$5,041.28
Publications	
MDL Litigation Fund Contributions/Assessments	
TOTAL EXPENSES	\$7,627.08

EXHIBIT C

BEINS, AXELROD, P.C.
1717 K Street, N.W. Suite 1120
WASHINGTON, D.C. 20006

The current version of Beins, Axelrod, P.C. was established in 1996, with the merger of the labor and employee benefits practices of two longstanding and highly regarded Washington, D.C. firms. Together, the Firm's lawyers bring more than 80 years of expertise in labor, employment and employee benefits law and litigation to the service of the Firm's clients.

The Firm's clients include unions and professional associations representing federal, state, and municipal public employees, private sector unions, benefit plans, nonprofit organizations, and individual employees in matters ranging from employment discrimination to stock options and severance to benefit plan amendment and terminations. The Firm's union clients include national and international unions as well as local unions and other subordinate bodies. The Firm litigates on behalf of its clients in federal and local trial and appellate courts, and in administrative agencies including the National Labor Relations Board, the District of Columbia Public Employee Relations Board, the Federal Labor Relations Authority, the U. S. Department of Labor and other forums.

The Firm has five types of ERISA clients. For general fund clients, the Firm provides day-to-day representation and advice on matters ranging from drafting Plan Documents and securing their approval by the Internal Revenue Service to advising trustees whose actions are questioned by plan participants or by the government. The Firm has prosecuted cases involving the collection of contributions, and the collection of withdrawal liability. The Firm has defended trustees charged with fiduciary breaches and has defended funds in benefit determination cases. Second, for other fund clients, the Firm serves solely as prosecutor in collection matters against delinquent employers. Third, the Firm has represented individual Funds in the prosecution of fiduciary breaches by former trustees and service providers. Fourth, the Firm has represented individual fund participants in the prosecution of benefit claims.

Fifth, the Firm has begun to represent funds and fund participants in class action litigation against fund service providers for fiduciary breaches. The Firm is counsel of record in the following cases on behalf of ERISA plans and their participants:

- *Henriquez v. State Street Bank and Trust Company et al*, (D. Mass), Case No. 1:11-cv-12049-MLW: Alleging breaches of fiduciary duty related to defendants' pricing and execution of foreign exchange transactions for funds invested in by plan participants.
- *Carver v. The Bank of New York Mellon*, Case No. 12 Civ. 9248 and *Fletcher v. The Bank of New York Mellon*, Case No. 14 Civ. 5496 (S.D. N.Y.): Alleging breaches of fiduciary duty related to defendants' pricing and execution of foreign exchange transactions for funds invested in by plan participants. This case recently settled for approximately \$680 million.
- *Fletcher v. Convergenx Group LLC*, Case No. 13-cv-9150 (S.D. N.Y.): Alleging breaches of fiduciary duty in brokerage services or transition management services where defendants

added unauthorized and undisclosed markups and markdowns under their double-charging scheme.

- *Carver v. Bank of New York Mellon*, Case No. 15-cv-10180 (S.D. N.Y.): Alleging breaches of fiduciary duty related to defendants' pricing and execution of American Depository Receipts (ADRs) invested in by plan participants.

Beins, Axelrod, P.C. also represents employees in class actions and individual cases alleging violations of federal and local civil rights, wage and hour, pension and other employment laws. Partner Jonathan Axelrod has served as lead counsel in the litigation and successful settlement of the following class action cases brought by employees against their employers:

- *Carr v. The Whitestone Group*, Civil Action No. 1:09-cv-03412 (D. Md.) (breach of contract, fiduciary breach).
- *Brown v. Vance*, Civil Action No. 1:00CV00135 (D. D.C.) (FLSA).
- *Abdullah v. District of Columbia*, Civil Action No. 00CV01295 (D. D.C.) (FLSA).

PRINCIPAL ATTORNEYS

JONATHAN G. AXELROD

After almost three years in the Appellate Court Branch of the National Labor Relations Board litigating in the United States Court of Appeals, Mr. Axelrod became Assistant General Counsel of the Eastern Conference of Teamsters, where he represented Local Unions in litigation with employers. After six years with the Eastern Conference, in 1980 he and Hugh Beins founded what has become Beins, Axelrod, P.C. While in private practice, Mr. Axelrod has represented labor unions in numerous district and appellate court proceedings and has argued in the Supreme Court of the United States (*Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981)). He has represented Taft-Hartley funds since 1991. He has published numerous articles and presented papers on a variety of issues involving labor relations. He is the author of the Duty of Fair Representation Chapter in LABOR UNION LAW AND REGULATION, published by the American Bar Association's Section of Labor and Employment Law and BNA.

Employment History

- Shareholder, Beins, Axelrod, P.C., 1996-.
- Shareholder, Beins, Axelrod, Osborne, Mooney & Green, P.C., 1980-1996.
- Assistant General Counsel, Eastern Conference of Teamsters, 1974-1980.
- Attorney, Office of the General Counsel, Appellate Court Branch, National Labor Relations Board, 1971-1974.

Trusteeships

ILGWU Death Benefit Fund, 2009-2017.

Independent Fiduciary

Consolidated Retirement Fund, 2011-
National Retirement Fund, 2012 -
Amalgamated National Health Fund, 2012 -

Education

Dartmouth College, A.B. 1968.
Columbia University School of Law, J.D. 1971.
George Washington University Law Center, LL.M. (Labor) 1975.

Publications

- Axelrod, "The Duty of Fair Representation," **LABOR UNION LAW AND REGULATION** (BNA 2003) [and SUPPLEMENTS - 2005, 2007, 2009, 2011, 2013, and 2015] and **SECOND EDITION** (2017)
- Vaughn, Axelrod & Gorman, "Drug Testing Cases in the District of Columbia," 2 **The Washington Lawyer** 26 (1988).
- "Agency Reverses View on Union Contracts in Building Industry," IX **Legal Times** No. 44 at 12 (April 13, 1987).
- "Who's The Boss? Employee Leasing And The Joint Employer Relationship," 3 **The Labor Lawyer** 853 (1987) (Paper presented to the American Bar Association Committee on Development of the Law under the National Labor Relations Act, March 9, 1987).
- "The Dotson Board, Surface Bargaining and the Duty to Substantiate One's Bargaining Position," 2 **The Labor Lawyer** 751 (1986) (Paper presented to the American Bar Association Committee on Development of the Law under the National Labor Relations Act, March 3, 1986).
- "Common Obstacles to Organizing Under the NLRA: Combating the Southern Strategy," 59 **N.C.L.R.** 147 (1980).
- "The Statutory Right to Respect a Picket Line," 83 **Dickinson L.R.** 617 (1979).
- Axelrod & Kaufman, "Mansion House - Bekins - Handy Andy: The National Labor Relations Board's Role in Racial Discrimination Cases," 45 **Geo. Washington L.R.** 675 (1977)
- "The Application of the *Boys Markets* Decision in the Federal Courts," XVI **Boston College Industrial & Commercial Law Review** 893 (1975).
- "The Philadelphia Plan: Equal Employment Opportunity in the Construction Trades," 6 **Col. J. of Law & Social Problems** 187 (1970).

Papers and Speeches

- "Pyett, Arbitration, and the Duty of Fair Representation" - International Conference of Teamsters Lawyers, Portland, Oregon, August 22, 2012.
- "Citizens United, Free Speech, and Union Political Campaigns" - National Association of Police Organizations Legal Rights and Legislative Seminar, May 13, 2010.
- "The Duty of Fair Representation and *Pyett*" - ABA Section of Labor & Employment Law, 3rd Annual CLE Conference, Washington, D.C., November 7, 2009.
- "Pyett, Arbitration, and the Duty of Fair Representation" - International Conference of Teamsters Lawyers, Portland, Oregon, October 12, 2009.

- “The Arbitrator as Fiduciary” - ADR in Labor and Employment Law Committee, Section of Labor and Employment Law, American Bar Association, Key West, Florida, February 16, 2009.
- “The Employee Free Choice Act or ‘Happy Days Are Here Again’” - Virginia Bar Association, 38th Annual Conference on Labor Relations and Employment Law, October 2, 2008.
- “Shareholder Activism: An Undeveloped Opportunity” - International Conference of Teamsters Lawyers, Montreal, Canada, October 1, 2007.
- “The Duty of Fair Representation,” - International Conference of Teamsters Lawyers, September 26, 2005.
- “Bargaining Issues: Post 9/11 Workplace Security” - International Conference of Teamsters Lawyers, October 22, 2003.
- “Election Objections: An Overview” - Virginia Bar Association, 29th Annual Conference on Labor Relations and Employment Law, October 8, 1999.
- Current Topics in Labor and Employment Law - Union Security, D.C. Bar Continuing Legal Education Program, January 27, 1998
- Union Response to *Electromotion* Issues - District of Columbia Bar Association, Section on Labor Relations Law, April 2, 1997.
- “Salting and Other Current Issues” - Virginia Bar Association, 26th Annual Conference on Labor Relations and Employment Law, September 28, 1996.
- “Drug & Alcohol Testing/Americans With Disabilities Act: Impact on Employment in the Transportation Industries” - American Bar Association, Section of Administrative and Regulatory Practice, June 19, 1992.
- “Are Union Organizers Protected Employees Under the Act” - American Bar Association Committee on Development of the Law under the National Labor Relations Act 1992 Mid-winter meeting, March 3, 1992.
- “Damned If We Do, Damned If We Don’t” - American Bar Association Committee on Development of the Law under the National Labor Relations Act 1991 Mid-winter meeting, March 4, 1991.
- “Persuader Activities: Reporting Requirements for the Unwary” - Virginia Bar Association 18th Annual Conference on Labor Relations and Employment Law, September 19, 1988.
- “Employer Responsibility for Supervisory Misconduct” - Virginia Bar Association, 16th Annual Conference on Labor Relations and Employment Law, September 29, 1986.
- “Wrongful Discharge in the Union Environment,” Villanova University School of Law, Symposium on Wrongful Discharge, December 6, 1982.
- “Organizing Efforts in Trucking,” Villanova University School of Law, Symposium on Transportation Labor Issues for the 1980’s, May 18, 1982.

Public Service

- Associate Editor, THE DEVELOPING LABOR LAW (3d Ed. & Supp.) (ABA).
- Senior Editor, LABOR UNION LAW AND REGULATION, (BNA 2003, 2017 & Supps.)
- Treasurer, Capital Youth Hockey Club - 1996-1997.
- Co-Chair, District of Columbia Bar, Labor Law Section, 1985-1989; Steering Committee, 1989-1991.

- Director, Treasurer, President, The Travelers Aid Society of the District of Columbia (1984-1996).
- Director, Travelers Aid International (1986-1990).

H. DAVID KELLY, JR.

David Kelly has represented labor unions and Taft-Hartley funds for 38 years. Since joining Beins, Axelrod in 2001, he has specialized in employee benefits, labor and employment law, including the enforcement of statutory claims of employees under federal and various state laws, including the Employee Retirement Income Security Act (ERISA), and Title VII and the ADA, the FLSA and State analogues, as well as the representation of multiemployer and non-profit single employer employee benefit plans. Included among these is service as co-counsel in a number of class and/or collective actions to recover wages and/or benefits and for breach of fiduciary duty. He has appeared as counsel of record in more than a score of federal courts, and before state court judges and administrative officers in numerous jurisdictions as well as arbitrators in other proceedings. Mr. Kelly was chairman of the creditors committee in the Chapter 11 bankruptcy of American Carriers, in which a number of Taft-Hartley funds had withdrawal liability claims.

He is a member of numerous bar associations and has been a speaker at the American Bar Association's annual and regional conferences as well as at other national conferences where he presented papers on topics that arise in our practice areas. He was elected to serve on the Steering Committee of the D. C. Bar's Labor and Employment Section for a three-year term, and was selected to be one of its co-chairs.

Mr. Kelly is a graduate of the University of Michigan (BA 1983), Northeastern University School of Law (JD 1986), and Wayne State University Law School (LLM (Labor Law), 1997).

Mr. Kelly has represented the following multi-employer funds:

- New England Teamsters and Trucking Industry Pension Fund;
- Teamsters Local Union No. 25 Health and Welfare Fund;
- Michigan Glaziers Pension, Health and Welfare, Vacation and Apprenticeship Funds;
- Michigan Cement Masons Pension, Health and Welfare, Vacation and Apprenticeship Funds;
- Michigan Bricklayers Pension, Health and Welfare, Vacation, Apprenticeship and Mortuary Funds;
- Michigan Tile, Terrazzo & Marble Workers Pension, Health and Welfare, Vacation and Apprenticeship Funds;
- Pattern Makers League of North America Funds;
- Boilermakers Pension and Health and Welfare Funds;
- Teamsters Joint Council No. 83 of Virginia Pension and Health and Welfare Fund;
- ITPEU Pension, Health and Welfare and Annual Benefits Funds;
- MEBA 401(k), D-1 Pension, JEC, National, Training and Vacation Funds;
- Teamsters Local 639 Pension, Health and Welfare, Scholarship and 401(k) Funds;
- Hagerstown Teamsters and Motor Carriers Pension and Health and Welfare Funds;
- ARA Pension and Health and Welfare Funds;

- Teamsters Local No. 453 Pension, Banking and Training Funds;
- Teamsters National 401(k) Savings Plan;
- UA Local 489 Pension, Annuity and Health and Welfare Funds;
- Mr. Kelly has also represented one single employer non-profit: Destination DC .

Publications

- *Practical Concerns Affecting the Arbitration of Statutory Claims*, Dispute Resolution Journal, November, 1998).
- *Preserving Labor Arbitration: The Historical Basis for Excluding Statutory Claims from Labor Arbitration*, 75 University of Detroit Mercy Law Review 1(1997).
- *United States Supreme Court to Resolve Contested Status of Paid Union Organizers*, Labor and Employment Lawnotes (State Bar of Michigan, Labor & Employment Law Section, Fall, 1995).

Presentations

- District of Columbia Bar Association, Public Sector Committee of Labor and Employment Law Section; Moderator and Panelist- *The Congressional Accountability Act: Assessing the Promise and Reality of the CAA* (April 11, 2002).
- University of Toledo Law School-Federalist Society Conference; *Labor Law in the 21st Century*, Panelist- *Balancing the Workers' Interests in Homeland Security, Privacy and Bargaining Strength* (April 3, 2003).
- AFL-CIO Lawyers Coordinating Committee- 2003 Annual Conference; Presenter and Author-*Government Curtailment of Employee Rights Post-September 11: Individual Employee Rights* (April 28, 2003).
- International Conference of Teamster Lawyers, Co-Author, *Bargaining Issues: Post 9/11 Workplace Security* (October 22, 2003).
- American Bar Association, 2004 Annual Conference, Labor and Employment Law Section; Panelist and Co-author- *When James Bond Enters the Workplace: Use and Abuse of Technology— A Guide for In-House Counsel and Litigators* (August 2004).
- American Bar Association, Labor and Employment Law Section, Technology Subcommittee; 2005 Midwinter Meeting; Presenter and Author- *Productivity Monitoring in the Workplace* (March 9, 2005)

Public Service

- **World Justice Project-Rule of Law Index** (2010-2019), contributor.
- **Lawyers Committee for Civil Rights Under Law -Voter Protection Project-** Commonwealth of Virginia (2008, 2012).
- CONTRIBUTOR: THE DEVELOPING LABOR LAW (2011-2013).
- Oversight Board-Forest Knolls Elementary School, Montgomery County, MD (2001-2006).
- Member-Ad hoc Committee to Select a New Principal- Forest Knolls Elementary School, Montgomery County, MD (2004).
- Vice President-Forest Knolls Community Pool (2001-2007).

JUSTIN P. KEATING

Mr. Keating graduated from the State University of New York College at Fredonia (BA, 1997) and George Washington University School of Law (JD 2000). He is admitted to practice in New York, the District of Columbia, and Virginia.

Mr. Keating practices almost exclusively in traditional labor law, collective bargaining, and employee benefits. He is admitted to and has appeared in four different U.S. District Courts and has litigated pre-trial through jury trial in several others on a *pro hac vice* basis. He has arbitrated over 100 collective bargaining grievance arbitrations. He has litigated several FLSA multi-plaintiff cases. While employed by the International Brotherhood of Teamsters, he was the first assistant counsel to the union in two rounds of negotiations for the largest private sector collective bargaining agreement in the country, covering over 200,000 employees. His work on collective bargaining negotiations ranges from advice to the union on strategy, legal issues on bargaining, strike/lockout preparations, health and welfare benefits, and labor cost accounting. He has taught many legal/labor law seminars to union officials in groups ranging in size from 10 to 200.

Mr. Keating has litigated multi-employer plan withdrawal liability cases (including to bench trial) and multi-employer plan collection cases in federal courts in Virginia and Maryland.

In addition to representing unions and their members, Mr. Keating served on the Gore 2000 recount team and has done voter protection legal work in 2004, 2006, 2008, and 2009.

From 2013 to 2017, Mr. Keating served as an elected member of the School Board for the City of Alexandria, Virginia. As a Board Member, he oversaw a \$280M budget and all policies (financial, educational, student, Human Resources, etc.) for a school system with 14,000 students, over 2,000 employees, and a \$200 million budget.