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as Plan Administrator, and  
MF Global Assigned Assets LLC

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

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In re	:	<b>Chapter 11</b>
	:	
MF GLOBAL HOLDINGS LTD., et al.,	:	<b>Case No. 11-15059 (MG)</b>
	:	
Debtors. <sup>1</sup>	:	<b>(Jointly Administered)</b>
-----	X	
MF GLOBAL HOLDINGS LTD., as Plan	:	
Administrator, and MF GLOBAL ASSIGNED	:	
ASSETS LLC,	:	
Plaintiffs,	:	
vs.	:	<b>Adv. Proc. No. 16-01251 (MG)</b>
	:	
ALLIED WORLD ASSURANCE COMPANY LTD.,	:	
IRON-STARR EXCESS AGENCY LTD.,	:	
IRONSHORE INSURANCE LTD., STARR	:	
INSURANCE & REINSURANCE LIMITED., and	:	
FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	
-----	X	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF AWARD OF FEES  
AND COSTS FOR THE BERMUDA INSURERS' CONTEMPT  
AND VIOLATION OF THE BARTON DOCTRINE**

<sup>1</sup> The debtors in the chapter 11 cases are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

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### **PRELIMINARY STATEMENT**

Courts have consistently held that where, as here, a party violates the Barton doctrine by bringing suit against a protected entity without the Court's approval, the aggrieved party is entitled to the fees and costs that it was forced to incur as a result of a Barton violation. This Court has already determined that the Bermuda Insurers<sup>2</sup> violated the Barton doctrine by initiating and pursuing the Bermuda Actions, and further found the Bermuda Insurers to be in contempt of this Court's temporary restraining order due to their improper actions in Bermuda. This Court accordingly issued a Preliminary Injunction, a contempt order, and then a ruling holding that the Bermuda Insurers violated the Barton doctrine.

As a direct result of these violations, Plaintiffs MF Global Holdings, Ltd. ("MFGH") as Plan Administrator and MF Global Assigned Assets, LLC ("MFGAA," with MFGH, the "MFG Plaintiffs"), were forced to incur (1) \$132,306.80 in fees and costs for representation by Bermuda counsel in the Bermuda Actions; (2) \$1,179,680.00 in fees to proceed in this Court and to assist Bermuda counsel; and (3) \$463,902.50 in fees to litigate appeals arising from the Barton violations, for a total of \$1,775,889.30 in fees and \$29,471.89 in costs. Because the Bermuda Insurers forced the MFG Plaintiffs to incur these fees and costs as a result of their Barton violation and contempt, clear precedent dictates that the MFG Plaintiffs are entitled to a total damages award of \$1,805,361.19 here.

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<sup>2</sup> The "Bermuda Insurers" are Allied World Assurance Company Limited ("AWAC"), Iron-Starr Excess Agency Ltd. ("Iron-Starr Excess"), Ironshore Insurance Ltd. ("Ironshore"), and Starr Insurance & Reinsurance Limited ("Starr," with Iron-Starr Excess and Ironshore, "Iron-Starr").

### **STATEMENT OF RELEVANT FACTS**<sup>3</sup>

This request for fees and costs is predicated on the expenses the MFG Plaintiffs were forced to incur in three separate forums as a result of the Bermuda Insurers' violation of the Barton doctrine: In Bermuda, in this Court, and in the United States District Court for the Southern District of New York. As the chronologically organized facts below illustrate, the proceedings in these forums were simultaneous and interrelated.

MFGH was appointed as the Plan Administrator pursuant to the *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (as amended and modified, the "Plan") (D.I. 1382),<sup>4</sup> confirmed by this Court on April 5, 2013 (the "Confirmation Order") (D.I. 1288). The Plan empowers MFGH, *inter alia*, to "form and transfer certain assets of the Debtors to new . . . entities . . . to hold certain assets of the Debtors." Plan, at Art. XIII.G. Pursuant to this authority, MFGH formed MFGAA for the purpose of holding certain assigned rights on behalf of the Debtors, including MFGI's claims against the Bermuda Insurers, transferred as part of the Sale and Assumption Agreement. SIPA D.I. 8855; D.I. 2114; D.I. 2123.

The MFG Plaintiffs filed the complaint (the "Complaint") initiating this adversary proceeding (the "Adversary Proceeding") on October 27, 2016. Adv. D.I. 1. The Complaint expressly identified MFGH as Plan Administrator under the Plan, charged with "liquidating all property under [the Plan] and making distributions to creditors of the Debtors' estates."

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<sup>3</sup> The MFG Plaintiffs, incorporate by reference in full the facts described in the Complaint (as defined below) against the Bermuda Insurers, and Federal Insurance Company ("Federal," with the Bermuda Insurers, the "Defendants").

<sup>4</sup> Citations to "D.I." refer to docket items in the main bankruptcy case of MFGH, Case No. 11-15059. Citations to "Adv D.I." refer to docket items in Adversary Proceeding Number 16-01251 (Bankr. S.D.N.Y.). Citations to "S.D.N.Y." refer to appeals docketed with the Southern District of New York. Each appeal is referenced by its docket number.

Complaint ¶ 21. The Complaint also described the creation of MFGAA as a subsidiary of MFGH designed to marshal the assets of the Debtors' estates by holding the right to recover on the claims formerly held by MFGI. Complaint ¶ 22.

After being served the summons and Complaint, the Bermuda Insurers on November 7, 2016, each commenced, *ex parte*, actions in Bermuda (the "Bermuda Actions") in which they requested and obtained injunctions against the MFG Plaintiffs (the "Anti-Suit Injunctions") from the Supreme Court of Bermuda (the "Bermuda Court"). The Anti-Suit Injunctions applied to not only the MFG Plaintiffs, but also their officers and directors, and their United States counsel, Jones Day. The Anti-Suit Injunctions restrained these parties from taking any actions in this Court to pursue the Adversary Proceeding, or to otherwise seek countervailing injunctive relief. Adv. D.I. 7-2; 7-3. The Anti-Suit Injunctions were served with a "Penal Notice," which threatened the MFG Plaintiffs, their officers and directors, and Jones Day with being "sent to prison" and/or having their assets seized if the Anti-Suit Injunctions were violated. *Id.* The transmittal letter from Sedgwick Chudleigh ("Chudleigh"), the Bermuda Defendants' Bermuda Counsel, further noted that if the Anti-Suit Injunctions were violated, "the Supreme Court of Bermuda would not enforce any U.S. judgment against a Bermuda entity." *Id.* At no point did the Bermuda Insurers seek the leave of this Court before bringing suit against the MFG Plaintiffs in Bermuda. After receiving the Anti-Suit Injunctions, the MFG Plaintiffs searched for and engaged Bermuda counsel ("Harneys"). Declaration of Jane Rue Wittstein, dated April 14, 2017 (the "Rue Wittstein Declaration") at ¶ 5.

The MFG Plaintiffs notified this Court on November 21, 2016 of the improper Anti-Suit Injunctions in a letter, on which the Bermuda Defendants were copied (the "November 21 Letter"). Adv. D.I. 7. The November 21 Letter set forth the facts supporting the apparent

violation by the Bermuda Insurers of the Barton doctrine and the violation of the Bar Order contained in the order approving the MDL Settlement Agreement. D.I. 2282. The MFG Plaintiffs also sent a letter dated November 21, 2016 directly to counsel for the Bermuda Insurers demanding withdrawal of the Bermuda Actions and apprising them that all costs and fees resulting from their violation of the Barton doctrine would be recoverable as sanctions. Adv. D.I. 69, Ex. C.

On November 22, 2016, this Court entered the first order to show cause (the "First OSC") instructing the Bermuda Defendants to explain why they should not be held in contempt for the improper Bermuda Actions. Adv. D.I. 6. At the hearing on the First OSC, the Bermuda Defendants refused to allow the MFG Plaintiffs' counsel to speak on the merits. Hr. Tr. 5:24-6:13 (Adv. D.I. 48).

On December 21, 2016, this Court entered its *Memorandum Opinion and Temporary Restraining Order* (the "TRO"), which, *inter alia*, enjoined the Bermuda Defendants from "taking any action to enforce" the Anti-Suit Injunctions against the MFG Plaintiffs. TRO at 32 (Adv. D.I. 35). The TRO directed the parties to appear before this Court on January 4, 2017 and to submit briefing in support of their positions.

On the morning of December 21, 2016, before this Court's issuance of the TRO, the Bermuda Defendants again requested *ex parte* the Bermuda Court to grant them an injunction directing the MFG Plaintiffs to dismiss this adversary proceeding. December 27, 2016 letter of B. Bennett to the Honorable Judge Martin Glenn (the "December 27 Letter") at 3-4. After receipt of the TRO, the Bermuda Defendants (1) served notice of their *ex parte* request for the Mandatory Injunction on Harneys and (2) proceeded *ex parte* at a December 22, 2016 hearing before the Bermuda Court to continue to request the Mandatory Injunctions, in violation of the

TRO. *Memorandum Opinion and Order Holding the Bermuda Insurers in Contempt* (the "Contempt Order") at 20-21 (Adv. D.I. 67).

The MFG Plaintiffs notified this Court of the improper actions taken by the Bermuda Defendants in the Bermuda Actions in the December 27 Letter. On December 29, 2016, this Court issued the second order to show cause (the "Second OSC") directing the Bermuda Defendants to appear and explain why they should not be held in contempt. Adv. D.I. 41. At the January 4, 2017 hearing, the Court directed the parties to provide further briefing regarding the violations of the Bar Order and the Barton doctrine. The Court also extended the TRO to January 18, 2017. Adv. D.I. 51.

On January 4, 2017, The Bermuda Insurers filed the first of three sets of motions for leave to appeal, seeking leave to appeal the Court's finding in the TRO Order that specific jurisdiction existed over the Bermuda Insurers and that the service of process was properly effectuated (the "First Appeal"). Adv. D.I. 52- 60; S.D.N.Y. No. 1:17-cv-00106, ECF No. 3; S.D.N.Y. No. 1:17-cv-00113, ECF No. 3.

On January 12, 2017, this Court entered an order granting a preliminary injunction aimed at preventing the Bermuda Insurers from taking any action to impede or obstruct this Court's administration of the adversary proceeding. Adv. D.I. 66. This Court also entered the Contempt Order finding that the Bermuda Insurers had willfully violated the TRO by obtaining the Mandatory Injunction in Bermuda. Adv. D.I. 67.

On January 17, 2017, the MFG Plaintiffs filed their oppositions to motions for leave to appeal on the First Appeal before the Honorable Judge Robert Sweet in the District Court for the Southern District of New York (the "District Court"). S.D.N.Y. No. 1:17-cv-00106, ECF Nos. 5-6; S.D.N.Y. No. 1:17-cv-00113, ECF Nos. 4-5.

In the Bermuda Actions, on January 17, 2017, AWAC moved, pursuant to the Preliminary Injunction, the Bermuda Court to vacate the Anti-Suit Injunctions and the Mandatory Injunction. AWAC also moved the Bermuda Court to hear arguments to decide the arbitrability of the underlying dispute on January 23, 2017. Iron-Starr, in contrast, moved for the Injunctions to be vacated and requested that the Bermuda Court de-list the January 23, 2017 hearing.

The MFG Plaintiffs submitted their omnibus response to the Bermuda Defendants' motions in opposition to the application of the Bar Order and the Barton doctrine on January 18, 2017. Adv. D.I. 69. In response to AWAC's decision to move forward in Bermuda on January 23, 2017, the MFG Plaintiffs sent a letter notifying the Court of AWAC's actions. On January 19, 2017, the MFG Plaintiffs filed an emergency motion seeking relief from the Court in response to AWAC's attempt to have the Bermuda Court hear arguments regarding the arbitrability of the dispute. Adv. D.I. 70-71.

On January 23, 2017, at the hearing on the violation of the Bar Order and the Barton doctrine, the Court issued an oral ruling finding that the Bermuda Defendants violated the Barton doctrine. Adv. D.I. 78, 80. The Court also directed the parties to confer regarding a briefing schedule on damages the MFG Plaintiffs are entitled to as a result of the Barton violation and the Bermuda Defendants' contempt. Jan. 23 Hr. Tr. 117:9-12 (Adv. D.I. 124). The Court then issued a written order directing the Bermuda Defendants to dismiss the Bermuda Actions. Adv. D.I. 78.

On the appellate front, on January 24, 2017, AWAC filed its reply in support of the First Appeal. S.D.N.Y. No. 1:17-cv-00113, ECF Nos. 7-8. On January 26, 2017, the Bermuda Insurers filed their second set of notices of appeal and motions for leave to appeal, seeking leave

to appeal the Preliminary Injunction Order and the Contempt Order, again on the grounds that the Court lacked specific jurisdiction over them and that the service of process was deficient (the "Second Appeal"). Adv. D.I. 87-98; S.D.N.Y. No. 1:17-cv-00742, ECF Nos. 1-6; S.D.N.Y. No. 1:17-cv-00780, ECF Nos. 1-3. On January 31, 2017, the MFG Plaintiffs filed oppositions to the motions for leave to appeal to the Second Appeal. S.D.N.Y. No. 1:17-cv-00742, ECF Nos. 7-8; S.D.N.Y. No. 1:17-cv-00780, ECF Nos. 4-5.

On January 31, 2017, the Court entered the *Memorandum Opinion and Order Finding That the Bermuda Insurers Violated the Barton Doctrine* (the "Barton Order"). Adv. D.I. 99.

On February 2, 2017, the MFG Plaintiffs and the Bermuda Insurers appeared before Judge Sweet in the District Court for the hearing on the First Appeal. On February 6, 2017, the Bermuda Insurers filed the third round of appeals, purportedly as an appeal as of right, this time of the Barton Order ("Third Appeal"), again challenging personal jurisdiction and service, as well as the applicability of the Barton doctrine. Adv. D.I. 103-111; S.D.N.Y. No. 1:17-cv-00933 ECF Nos. 1-3; S.D.N.Y. No. 1:17-cv-00953 ECF Nos. 1-3. On February 7, 2017, the Bermuda Insurers filed a reply in support of the Second Appeal. S.D.N.Y. No. 1:17-cv--00742, ECF Nos. 10-11; S.D.N.Y. No. 1:17-cv--00780, ECF No. 7. On February 10, 2017, the District Court denied the First Appeal on the threshold grounds of ripeness and mootness, and failure to satisfy 28 U.S.C. § 1292(b) factors, as the proceedings in this Court are on-going and full record is yet to be developed. S.D.N.Y. No. 1:17-cv-00106, ECF No. 13; S.D.N.Y. No. 1:17-cv-113, ECF No. 15.

On March 2, 2017, the parties appeared before Judge Sweet regarding the Second Appeal. At that hearing, the parties also presented arguments as to whether the Third Appeal should be treated as an appeal as of right, or a motion for leave to appeal. The District Court

elected not to treat the Third Appeal as an appeal as of right, and directed the parties to brief the question of appealability. S.D.N.Y. No. 1:17-cv-00933, ECF No. 11; S.D.N.Y. No. 1:17-cv-00953, ECF No. 10. The Bermuda Insurers filed their brief on appealability on March 21, 2017. S.D.N.Y. No. 1:17-cv-00933, ECF No. 10; S.D.N.Y. No. 1:17-cv -00953, ECF No. 9. The MFG Plaintiffs filed their opposition on April 4, 2017, S.D.N.Y. No. 1:17-cv-00933, ECF No. 12; S.D.N.Y. No. 1:17-cv-00953, ECF No. 11, and the Bermuda Insurers filed their reply brief on April 11, 2017. A hearing on the Third Appeal before the District Court is scheduled for April 19, 2017.

### **RELIEF REQUESTED**

Pursuant to the inherent equitable powers of this Court and Section 105 of the Bankruptcy Code, the MFG Plaintiffs hereby seek entry of an order directing the Bermuda Insurers to pay the MFG Plaintiffs' reasonable attorneys' fees and costs incurred in connection with or arising from the Bermuda Insurers' violation of the Barton doctrine and contempt.

### **ARGUMENT**

As a result of the Bermuda Defendants' continued violations of the Barton doctrine, the TRO and the Preliminary Injunction, the Bermuda Insurers forced the MFG Plaintiffs to incur significant fees and costs, including requiring the MFG Plaintiffs to (1) engage Bermuda counsel to act on their behalf in the Bermuda Actions; (2) pursue relief in this Court regarding enforcement of the Barton doctrine and assist Bermuda counsel in the Bermuda Actions; and (3) litigate three separate attempts by the Bermuda Insurers to take up interlocutory appeals arising from rulings on the Barton violation, repeatedly challenging this Court's *prima facie* rulings on personal jurisdiction and service, each time in a different interlocutory posture. The MFG Plaintiffs are entitled to all fees and costs arising from or related to the improper Bermuda

Actions. This includes, but is not limited to, all fees and costs incurred by the MFG Plaintiffs by participating in the Bermuda Actions themselves, and all actions before the Bankruptcy Court and the district court that would not have occurred but for the violations.

**I. THE MFG PLAINTIFFS ARE ENTITLED TO ALL FEES AND COSTS INCURRED AS A RESULT OF THE BERMUDA ACTIONS AND THE BERMUDA INSURERS' CONTEMPT**

Courts have recognized that once a party has established that its adversary violated the Barton doctrine, the aggrieved party is to be "given the opportunity to prove the amount of the damages incurred as a result of having to defend against" the improperly filed suit. In re DeLorean Motor Co., 991 F.2d 1236, 1242 (6th Cir. 1993); see also In re Nat'l Century Fin. Enters., Inc., 426 B.R. 282, 295 (S.D. Ohio 2010) (concluding that the aggrieved party was entitled to a hearing on the issue of damages resulting from violation of Barton); In re Biebel, Bankr. No. 02-32865 (LMW), 2009 WL 1451637, at \*6 (Bankr. D. Conn. May 20, 2009) (enjoining action commenced in violation of Barton and setting date for hearing on monetary sanctions); In re Byrd, No. 04-35620-TJC, 2007 WL 1485441, at \*12 (Bankr. D. Md. May 18, 2007) aff'd 352 Fed. Appx. 775 (4th Cir. 2009) (per curiam) (same). Once the aggrieved party establishes the costs it was forced to incur as a result of the Barton violation, a court is then able to award that amount as damages pursuant to its "inherent power to impose sanctions." In re EBW Laser, Inc., No. 05-10220C-7G, 2012 WL 3490417, at \*18 (Bankr. M.D.N.C. Aug. 14, 2012) (citing Ginsberg v. Evergreen Sec., Ltd. (In re Evergreen Sec., Ltd.), 570 F.3d 1257, 1273 (11th Cir. 2009)) (explaining that a court's "power to assess damages for a Barton Doctrine violation is distinct and independent of Rules 11 and 9011").

Consistent with this precedent, courts routinely award parties the amount of fees and costs that they were forced to incur due to their adversary's violation of the Barton doctrine. In BCE, for example, the district court upheld the bankruptcy court's award to the trustee of his

"incremental costs incurred . . . for the hiring of Bermuda counsel" and "the fees incurred by the Trustee and his law firm, and the costs incurred by his local counsel, in defense of the Bermuda action" where, as here, the defendant Bermuda insurance company brought suit against the insured in Bermuda without first seeking leave in violation of the Barton doctrine. BCE West v. Ace Ins. Co., No. 06-0325-PHX-JAT, 2006 WL 8422206, at \*8 & n.19. Likewise, in DeLorean, the Sixth Circuit held that when a trustee was sued in violation of the Barton doctrine, he was entitled to the damages requested in his complaint, as well as those incurred in defending the improperly brought malicious prosecution claim, including the costs incurred in filing a complaint with the Bankruptcy Court to enjoin the violator's unlawful foreign suit. 991 F.2d at 1242. And in In re EBW Laser, Inc., 2012 WL 34901417 (M.D.N.C. Aug. 14, 2012), the court held that "where, as in this proceeding, a party has filed a suit in violation of the Barton Doctrine, such party is liable for the damages resulting from such violation, and the recoverable damages include the attorneys' fees and expenses incurred in opposing the unauthorized suit as well as the attorneys' fees and expenses incurred in bringing the proceeding to recover the damages resulting from the violation." 2012 WL 3490417 at \*7.

Here, as a direct result of the Bermuda Insurers' Barton violation, the MFG Plaintiffs were forced to incur significant fees defending against the Bermuda Actions in Bermuda, before this Court and the District Court. Rue Wittstein Decl. at ¶ 3 (\$132,306.80 in Bermuda counsel's fees and costs and \$1,643,582.50 in Jones Day fees and \$29,471.89 in costs). Specifically, as in BCE West, the MFG Plaintiffs were required to hire Bermuda counsel to represent them in the Bermuda proceedings at a cost of \$132,306.80. In addition, the Bermuda Insurers' actions forced the MFG Plaintiffs to incur \$1,179,680.00 in attorneys' fees litigating the fallout of the Bermuda Insurers' Barton violation in this Court and providing assistance to Bermuda counsel. Moreover,

the MFG Plaintiffs have incurred approximately \$463,902.50 thus far opposing three separate motions for leave to appeal in the district court and continue to incur additional fees and costs in connection with the pending appeals.<sup>5</sup> Because these amounts represent the fees and costs incurred by the MFG Plaintiffs as a direct result of the Bermuda Insurers' Barton violation, the MFG Plaintiffs are entitled to a total damages award of \$1,805,361.19 for attorneys' fees and costs incurred through February 28, 2017.

**II. THE ATTORNEYS' FEES INCURRED BY THE MFG PLAINTIFFS DUE TO THE BERMUDA INSURERS' BARTON VIOLATION ARE REASONABLE**

A party requesting attorney's fees "must document the application with contemporaneous time records. These records should specify, for each attorney, the date, the hours expended, and the nature of the work done." N.Y. State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983). The requesting party must further show that the hourly rates charged by the attorneys are "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). When determining the reasonableness of attorneys' hourly rates, the court may rely upon its "knowledge of hourly rates in this District from its review of fee applications in many cases and its award of fees." In re MarketXT Holdings Corp., Bankr. No. 04-12078, 2006 WL 2583644, at \*5 (Bankr. S.D.N.Y. July 21, 2006). The court may also "take judicial notice of hourly rates approved in other cases involving matters of similar complexity." Mem. Op. at 31, In re Relativity Media, ECF No. 2211 (Bankr. S.D.N.Y. Mar. 22, 2017) (No. 15-11989 (MEW)) (citing Townsend v. Benjamin Enters., 679 F.3d 41, 59 (2d Cir. 2012)). Finally, "the

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<sup>5</sup> Two appeals (the Second Appeal and the Third Appeal) are still pending before Judge Sweet of the United States District Court for the Southern District of New York. The MFG Plaintiffs reserve all of their rights with regard to seeking recovery of their expenses associated with these ongoing appeals.

reasonableness of the attorneys' fees . . . depends on the complexity and importance of the matter being handled. A complicated, fast-paced, 'bet the company' litigation requires counsel of higher caliber (and expense) than a routine case that has little at stake." Mem. Op. at 26-27, Relativity Media, ECF No. 2211 (No. 15-11989 (MEW)). Notably, courts in this jurisdiction have approved Jones Day's rates as reasonable, noting that these rates were in line with billing rates charged by Jones Day's peer firms. See, e.g., Mem. Op. at 31, Relativity Media, ECF No. 2211 (No. 15-11989 (MEW)); Order Regarding Motion for Civil Contempt at 9, In re Soundview Elite Ltd., ECF No. 83 (Bankr. S.D.N.Y. June, 16, 2015) (No. 1:14-ap-01923) (finding Jones Day's fees reasonable).

The MFG Plaintiffs' request for \$1,311,986.80 in attorneys' fees, representing fees incurred by Jones Day and Harneys before this Court and in Bermuda, is reasonable and supported by the detailed invoices of the fees incurred. The Defendants' E&O Policies represent a significant asset of the estate, thus rendering this case exceptionally important to the MFG Plaintiffs. Moreover, the Bermuda Insurers' actions in Bermuda, in this Court, and in the District Court not only raised multiple complex legal issues, but also forced the MFG Plaintiffs to respond to motions on multiple fronts on an extremely short time line.

Indeed, in addition to filing responses in this Court that were necessitated by the Bermuda Insurers' Barton violation, the MFG Plaintiffs were also required to prepare for multiple proceedings initiated by the Bermuda Insurers in Bermuda. The Bermuda proceedings included the Bermuda Insurers' efforts at expanding the scope of the Injunctions (through the Mandatory Injunction), as well as AWAC's attempt to race to judgment in Bermuda so as to hinder this Court's jurisdiction by seeking a declaration on the arbitrability of their insurance policies. Adv. D.I. 67, 68, 70. Responding to these actions required the MFG Plaintiffs to incur

\$1,311,986.80 in attorneys' fees and costs through February 28, 2017.

The MFG Plaintiffs have also been responding to three separate sets of motions for leave to appeal in the district court (or, rather, two separate motions for leave to appeal, and an appeal purportedly as of right, but which the district court deemed to be a motion for leave to appeal). Even after the district court denied the first motion for leave to appeal on threshold grounds, in recognition that the proceedings in this Court are ongoing and full record is yet to be developed, the Bermuda Insurers have continued to file appeals from different interlocutory orders by this Court. These district court proceedings were simultaneous with the proceedings in other venues, including in Bermuda and briefing in this Court – first, in connection with the Barton violations, and then pursuant to the Case Management Order on bond and motion to compel arbitration, as well as undertaking jurisdictional discovery.<sup>6</sup> In doing so, the MFG Plaintiffs incurred approximately \$463,902.50 in attorneys' fees related to the appeals.

Even more so than in Relativity Media, "[t]h[is] matter . . . had to be litigated at a fast pace and under great pressure. The litigation required sophisticated counsel who could devote a great amount of specialized resources to the task on short notice." Mem. Op. at 27, Relativity Media, ECF No. 2211 (No. 15-11989 (MEW)). Finally, as multiple Judges of this Court have recognized in other proceedings, the rates charged by Jones Day in rendering its services are reasonable and in line with industry practice. See supra at p. 13.

### **RESERVATION OF RIGHTS**

Nothing contained herein is intended to or should be construed as a waiver of the MFG Plaintiffs' rights to claim additional attorneys' fees and costs for any future violations of the

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<sup>6</sup> For the avoidance of doubt, fees for matters unrelated to the Barton violations and contempt, such as time spent on the motions to compel arbitration, the bond motion, and jurisdictional discovery, were excluded from the present application, as described in the accompanying declaration.

Barton doctrine by the Bermuda Insurers. The MFG Plaintiffs further reserve the right to revise and supplement their fee requests for any corrections or changes, and for time necessarily incurred after February 28, 2017.

**NO PRIOR REQUEST**

No prior request for the relief sought in this Motion has been made to this or any other court.

**CONCLUSION**

The MFG Plaintiffs therefore respectfully request that the Court (i) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief sought therein and (ii) granting other and further relief to the MFG Plaintiffs as the Court may deem proper.

Dated: April 14, 2017  
New York, New York

Respectfully submitted,

/s/ Bruce Bennett

Bruce Bennett  
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- and-

/s/ Jane Rue Wittstein

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Counsel for MF Global Holdings Ltd.,  
as Plan Administrator, and  
MF Global Assigned Assets LLC

**CERTIFICATE OF SERVICE**

I, Jane Rue Wittstein, certify that on April 14, 2017, I caused the foregoing Memorandum of Law in Opposition to the Defendants' Motion for Leave to Appeal to be filed with the Clerk of the Court and served upon all counsel of record via the Court's CM/ECF system.

/s/ Jane Rue Wittstein  
Jane Rue Wittstein

## **EXHIBIT A**

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

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In re	:	<b>Chapter 11</b>
	:	
MF GLOBAL HOLDINGS LTD., et al.,	:	<b>Case No. 11-15059 (MG)</b>
	:	
Debtors. <sup>1</sup>	:	<b>(Jointly Administered)</b>
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MF GLOBAL HOLDINGS LTD., as Plan	:	
Administrator, and MF GLOBAL ASSIGNED	:	
ASSETS LLC,	:	
Plaintiffs,	:	
vs.	:	<b>Adv. Proc. No. 16-01251 (MG)</b>
	:	
ALLIED WORLD ASSURANCE COMPANY LTD.,	:	
IRON-STARR EXCESS AGENCY LTD.,	:	
IRONSHORE INSURANCE LTD., STARR	:	
INSURANCE & REINSURANCE LIMITED., and	:	
FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	
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**[PROPOSED] ORDER AWARDING ATTORNEYS FEES AND COSTS**

Upon the motion, dated April 14, 2017 (the "Motion"),<sup>2</sup> of MF Global Holdings Ltd. ("MFGH"), as Plan Administrator ("Plan Administrator") under the *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*. (D.I. 1382) (the "Plan") and MF Global Assigned Assets LLC ("MFGAA," and with MFGH, the "MFG Plaintiffs"), pursuant to the inherent equitable powers of this Court and § 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), for an award of attorneys' fees and costs incurred as a result of Allied World Assurance Company Limited ("AWAC"), Iron-Starr Excess Agency Ltd. ("Iron-Starr Excess"), Ironshore Insurance Ltd. ("Ironshore"), and Starr Insurance & Reinsurance

<sup>1</sup> The debtors in the chapter 11 cases are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Limited. ("Starr," with Iron-Starr Excess and Ironshore, "Iron-Starr," and collectively with AWAC, the "Bermuda Insurers") contempt and violation of the Barton doctrine, as more fully described in the Motion and supporting Declaration of Jane Rue Wittstein, dated April 14, 2017 (the "Rue Wittstein Declaration"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Bermuda Insurers, pursuant to the *Case Management and Scheduling Order on Threshold Issues* (Adv. D.I. 122) (the "Case Management Order"); and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted in all respects; and it is further

ORDERED that the Bermuda Insurers shall pay the MFG Plaintiffs \$132,306.80 for the fees and costs incurred by the MFG Plaintiffs for representation by Bermuda counsel in the Bermuda Actions.

ORDERED that the Bermuda Insurers shall pay the MFG Plaintiffs \$1,179,680.00 in fees and \$29,471.89 in costs for the work performed by Jones Day for the MFG Plaintiffs arising out of the Barton violation to proceed before this Court and to provide assistance to Bermuda counsel to the MFG Plaintiffs, provided, however, that AWAC alone is responsible for \$47,335.00 of these. For the avoidance of doubt, \$93,422.50 of the \$1,179,680.00 in fees is

attributable to the Bermuda Insurers' contempt, as described in the Motion and the Rue Wittstein Declaration.

ORDERED that the Bermuda Insurers shall pay the MFG Plaintiffs \$463,902.50 in fees to litigate the First Appeal, the Second Appeal and the Third Appeal arising out of the Bermuda Insurers' Barton violation and contempt.

ORDERED that the \$879,013.95 to be paid by Iron-Starr and the \$926,348.95 to be paid by AWAC shall be paid within 10 days of the entry of this Order.

ORDERED that this Order shall not be construed as a limitation on the rights of the MFG Plaintiffs to seek additional attorneys' fees and costs incurred since February 28, 2017, or fees and costs that may incur in connection with or arising from the Barton violation or contempt of the Bermuda Insurers

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation and enforcement of this Order.

Dated: \_\_\_\_\_, 2017  
New York, New York

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE