

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(CLASS ACTION)

No.: 500-06-000215-034

MARK RABINOVITCH

Plaintiff

-v-

CIBC ASSET MANAGEMENT INC.

Defendant

DECLARATION OF INSCRIPTION ON THE ROLL FOR HEARING
(Rule 15 R.P.S.C.Q. & Article 274.1 C.C.P.)

1. DEPONENT: ROBERT KUGLER

ATTORNEYS OF RECORD:

Me Neil Stein
STEIN & STEIN INC.
4101 Sherbrooke St. W.
Montreal, Quebec H3Z 1A7
Tel: (514) 866-9806 Fax: (514) 875-8218

Me Robert Kugler
KUGLER KANDESTIN, L.L.P.
1 Place Ville-Marie, Suite 2101
Montreal, Quebec H3B 2C6
Tel: (514) 878-2861 Fax: (514) 875-8424

- Plaintiff
 Defendant
 Other

2. **EXHIBITS:**

A List of the Exhibits disclosed to the other party is attached.

3. **TO DATE, THE OTHER PARTY HAS RECEIVED THE FOLLOWING:**

The reports provided for in Article 294.1 C.C.P.

All or extracts of the Examinations in accordance with Article 398.1 C.C.P.

All or extracts of the Examinations in accordance with Article 398.2 C.C.P.

The medical reports in accordance with Article 399.2 C.C.P.

The expert's reports in accordance with Article 402.1 C.C.P.

Statements, reports and certificates required under the Rules applicable in family matters

The Notice to Admit the Genuineness and Correctness of a Document (Article 403 C.C.P.)

4. **TRIAL:**

The deponent:

certifies that it is ready to proceed;

estimates that its proof and argument will last three (3) days.

5. **CONCISE STATEMENT OF THE QUESTIONS OF LAW AND FACT IN DISPUTE:**

On behalf of the class members, the Plaintiff submits that CIBC Asset Management Inc. ("CIBC") made a fundamental change to the Renaissance U.S. RSP Index Fund ("Fund") on or about April 5, 2002 by fully exposing the Canadian money invested in the Fund to the risk of fluctuations in the exchange rate between the U.S. dollar and the Canadian dollar ("U.S. Dollar Currency Risk").

CIBC added U.S. Dollar Currency Risk as a risk factor for the Fund illegally. CIBC did not inform the investors of the change, did not file a material change notice, did not obtain the investors' prior approval to the change as required by law, and did not act with prudence, diligence and in the best interests of the investors in the administration of the Fund.

The illegally added U.S. Dollar Currency Risk only became public on November 21, 2003.

As a result of the U.S. Dollar Currency Risk illegally added by CIBC, investors of the Fund, collectively, suffered damages in the total amount of approximately \$26,000,000.00.

At this stage of the action, by Final Judgment, the Court is asked to declare that CIBC is liable to the class, and to condemn CIBC to pay damages in the collective amount of \$26,000,000.00.

CIBC has denied liability.

6. NAMES OF WITNESSES, OBJECT OF THEIR TESTIMONY, WHETHER THEY WILL TESTIFY IN FRENCH OR ENGLISH, OR WITH THE ASSISTANCE OF AN INTERPRETER:

Name Of Witness		Object Of Testimony	Language	Time
1.	Mark Rabinovitch	Facts pertaining to CIBC's fault, admission that investors were not informed of the fundamental change, fundamental characteristics of the Fund.	English	2 hours
2.	Raza Hassan	Fundamental change made to the Fund by CIBC.	English	1 hour
3.	Jeffrey Rubin, Representative of CIBC from its foreign exchange division	The nature of U.S. Dollar Currency Risk and the outlook for the exchange rate between the Canadian dollar and the U.S. dollar at the time that CIBC exposed the Fund to U.S. Dollar Currency Risk.	English	15 minutes
4.	Carl Gauvin	Management of the day-to-day affairs of the Fund.	English or French	20 minutes
5.	Brenda Bartlett	Fundamental change made by CIBC to the Fund and failure to inform or obtain the approval of the investors prior to making the change.	English	20 minutes

6.	Rick Maggini	Marketing materials distributed by the Fund administrator identifying fundamental features of the Fund.	English	10 minutes
7.	Richard Pearson	Marketing materials distributed by the Fund administrator indicating fundamental features of the Fund.	English	10 minutes
8.	Several Financial Advisors and Investors	The nature of the Fund that they invested in, the failure of CIBC to disclose the addition of U.S. Dollar Currency Risk or obtain approval therefor prior to making such a fundamental change.	English and French	20 minutes each
9.	Representative of Northwater (formerly Newcastle), Manager of the Fund at inception	One of the fundamental characteristics of the Fund at inception was that it was to be currency neutral; the Fund was run in a currency neutral manner throughout Atlas' administration of the Fund.	English	30 minutes
10.	Representative of Merrill Lynch	The Fund was run in a currency neutral manner throughout Merrill Lynch's administration of the Fund.	English	20 minutes
11.	Eric Kirzner, expert	The nature of the Fund, the difference between currency neutral and currency exposed index mutual funds, the necessity to adhere to the investment objectives of the Fund, the requirement to disclose and obtain investor approval prior to making a fundamental change to the Fund, and CIBC's failure to do so.	English	2 hours

12.	Arthur Lavigne, expert	The quantum of the collective damages sustained by the class as a result of U.S. Dollar Currency Risk from April 5, 2002 to November 21, 2003.	English	1 hour
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7. **SUGGESTED ADMISSIONS, INCLUDING THOSE WHICH MAY REDUCE THE NUMBER OF WITNESSES TO BE CALLED:**

No admissions at this time.

8. **AUTHORITIES, JURISPRUDENCE AND DOCTRINE TO WHICH YOU INTEND TO REFER (MAKE ONE LIST ONLY AND ATTACH A SCHEDULE, IF NECESSARY):**

Authorities to be produced shortly before trial.

9. **ATTESTATIONS AND OATHS:**

I, the undersigned, **Me Robert Kugler**, Attorney, under my oath of office, hereby certify that:

- (a) The facts declared herein are accurate; and
- (b) I have informed the Plaintiff of his obligation to disclose all the Exhibits in his possession that he intends to invoke at the hearing; and
- (c) Those Exhibits have been communicated to the other party or will be so communicated within the period provided for in Article 331.8 C.C.P..

SIGNED AT MONTREAL, this 24th day of
May, 2006

Robert Kugler, Attorney

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Plaintiff

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Defendant

LIST OF EXHIBITS AND NOTICES DISCLOSED TO THE OTHER PARTY

(I) EXHIBITS:-

- Exhibit P-1:** Authorization Judgment (already communicated).
- Exhibit P-2:** Statement of Plaintiff's transactions (already communicated).
- Exhibit P-3:** "Final Simplified Prospectus and Annual Information Form" (already communicated).
- Exhibit P-4:** Brochure issued by Atlas.
- Exhibit P-5:** Extracts of the 1996 Annual Report signed by Atlas.
- Exhibit P-6:** Extracts of the 1997 Annual Report signed by Atlas.
- Exhibit P-7:** Extracts of the 1998 Annual Report signed by Atlas.
- Exhibit P-8:** Extracts of the 1999 Annual Report signed by Atlas.
- Exhibit P-9:** January 1996 Newsletter issued by Newcastle Capital Management Inc. portfolio manager of the Atlas American RSP Index Fund for Atlas Asset Management Inc.

- Exhibit P-10:** Spreadsheet provided by CIBC to indicate the numbers of unit holders and units of the Fund.
- Exhibit P-11:** Press Release and Information circular of Barclays Global Investors Canada Limited advising unit holders of a fundamental change regarding currency risk to be voted upon by investors.
- Exhibit P-12 en liasse:** Material change notices for the Fund.
- Exhibit P-13:** Letter from James Sinclair dated April 8, 1998.
- Exhibit P-14:** Atlas Memorandum dated May 20, 1998.
- Exhibit P-15:** Document entitled "Diversifying your Portfolio beyond 30%".
- Exhibit P-16:** Notice to investors of a change regarding currency risk by Transamerica Life Canada.
- Exhibit P-17:** Article entitled "The currency game".
- Exhibit P-18:** Document entitled "Fund Profile".
- Exhibit P-19:** Article dated October 2, 2003 praising CIBC foreign exchange analyst Jeffrey Rubin for predicting decrease in the U.S. dollar relative to the Canadian dollar.
- Exhibit P-20:** Notice to Unitholders of the Fund dated July 9, 2004.

(II) NOTICE OF PRODUCTION OF DOCUMENTS (Article 403 C.C.P.)

Exhibits P-1 to P-20 inclusive.

(III) NOTICE OF PRODUCTION OF EXTRACTS OF AN EXAMINATION ON DISCOVERY (Article 398.1 C.C.P.)

Extracts of the Examination on Discovery of Tracy Chénier taken on November 4, 2005, namely page 4 to page 5, line 23.

(IV) NOTICE OF FILING OF THE EXPERTISE REPORTS (Article 402.1 C.C.P.)

1. The expert report of Mr. Eric Kirzner, dated May 24, 2006; and,
2. The expert report of Mr. Arthur Lavigne, LBC International Investigative Accounting Inc., dated May 25, 2006.