

CANADA

(CLASS ACTION)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

NO.: 500-06-000215-034

MARK RABINOVITCH, the Class' designated representative, domiciled and residing at 288 Marsh Street, in the City of Pointe-Claire, District of Montreal, Province of Quebec, H9R 5Y5;

PLAINTIFF

v.

CIBC ASSET MANAGEMENT INC., a legal person, duly constituted according to law, having a place of business in the City of Montreal, Province of Quebec at 1155 René Lévesque West, Suite 1020, H3B 4R2;

DEFENDANT

RE-AMENDED MOTION INTRODUCTIVE OF CLASS ACTION

TO THE HONOURABLE MR. JUSTICE PIERRE JOURNET OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, AND PRESIDING OVER THE PRESENT CLASS ACTION, PLAINTIFF DECLARES THE FOLLOWING:

INTRODUCTION

1. By way of Judgment dated February 23, 2004, a copy of which is produced herewith as **Exhibit P-1**, the Honourable Mr. Justice Jean Normand ascribed the status of representative to the Plaintiff, and authorized the institution of the present class action on behalf of the following class (the "**Class**");

All persons who purchased, or were holders of units in a mutual fund originally known as Atlas American RSP Index Fund, subsequently known as Merrill Lynch U.S. RSP Index Fund and currently known as the Renaissance U.S. RSP Index Fund prior to March 28, 2002, and who remained unit holders of the Fund after that date.

THE PARTIES

2. CIBC Asset Management Inc. ("**CIBC**") is an administrator of a number of mutual funds, including the Renaissance U.S. RSP Index Fund;
3. The Renaissance U.S. RSP Index Fund (hereinafter, the "**Fund**") was formerly known as the Atlas American RSP Index Fund and the Merrill Lynch U.S. RSP Index Fund;

4. The Plaintiff is one of thousands of investors who purchased units in the Fund prior to March 28, 2002 (the “**CIBC Control Date**”), and who continued to own units in the Fund after the CIBC Control Date;
5. In particular, the Plaintiff purchased units in the Fund on March 2, 1999, March 1, 2000 and September 15, 2000, the whole as appears from a copy of a statement indicating the Plaintiff’s transactions, produced herewith as **Exhibit P-2**;

THE FUND

i) Fundamental Objective and Investment Policy of the Fund

6. On October 22, 1996, Atlas Asset Management Inc. (“**Atlas**”) established the Fund;
7. As appears from the original “Final Simplified Prospectus and Annual Information Form” filed by Atlas, a copy of which is produced herewith as **Exhibit P-3**, the fundamental objective of the Fund was to enable investors to make RRSP-eligible investments in a mutual fund whose performance would mirror or track the performance of a combination of stock indices (70% S&P 500, 20% S&P Midcap 400, 10% Nasdaq 100) traded on U.S. markets (the “**U.S. Indices**”), irrespective of any fluctuation in the exchange rate between the Canadian and U.S. dollar (the “**Exchange Rate**”);
8. A mutual fund that tracks U.S. stock indices irrespective of any fluctuation in the Exchange Rate is a “currency-neutral” (as opposed to “currency-exposed”) mutual fund. Thus Atlas established the Fund as a currency-neutral mutual fund;
9. Because the fund was currency-neutral, the performance of the Fund depended only on the performance of the U.S. Indices, and was not to be influenced by variations in the exchange rate between the Canadian dollar and the U.S. dollar;

ii) Administration of the Fund

10. Prior to the CIBC Control Date, the Fund was administered at different times by Atlas, Merrill Lynch Investment Managers Canada Inc. and CM Investment Management;
11. At all relevant times prior to the CIBC Control Date, the sole risk entailed by an investment in the Fund was that the U.S. Indices being mirrored would decrease in value. There was never any risk that variations in the Exchange Rate would have an impact on Class Members’ investments in the Fund because the Fund was currency-neutral;
12. Accordingly, at all relevant times prior to the CIBC Control Date, the Class Members’ investments in the Fund increased or decreased by approximately the same percentage that the U.S. Indices being mirrored by the Fund increased or decreased, the only variation in the performance attributable to fees owed by investors in the Fund and relatively insignificant errors in tracking the U.S. Indices;
13. As the Fund was currency-neutral, fluctuations in the Exchange Rate from the inception of the Fund until the CIBC Control Date did not prevent unit holders from achieving the same returns as those achieved by the U.S. Indices;
14. As of the CIBC Control Date, the Fund no longer continued to track the U.S. Indices in a currency-neutral manner;
15. As of the CIBC Control Date, CIBC began speculating on the fluctuation of the Exchange Rate;
16. As of the CIBC Control Date, a decrease in the value of the U.S. Indices being mirrored by the Fund no longer constituted the sole risk of an investment in the Fund;
17. Rather, as of the CIBC Control Date, Class Members’ investments in the Fund entailed the additional risk that variations in the Exchange Rate would influence their returns;

iii) Performance of the Fund Relative to the Performance of the U.S. Indices following the CIBC Control Date

18. CIBC began administering the Fund on or about March 28, 2002;
19. On November 21, 2003, the date the Motion for Authorization to Institute the present class action was filed, the value of the U.S. Indices was 6.79% lower than it was on the CIBC Control Date;
20. However, on November 21, 2003, the value of the Fund was 24.11% lower than it was on the CIBC Control Date;
21. Thus not only did the Fund fail to mirror the performance of the U.S. Indices from the CIBC Control Date until November 21, 2003, the returns achieved by the Fund were an astonishing 17.32% less than the returns achieved by the U.S. Indices during that period (the “Discrepancy”);
22. The foregoing Discrepancy is virtually the same as the percentage increase of the Canadian dollar relative to the U.S. dollar over the same period of time;
23. In or about May 2003, a representative of the Defendant, Mr. Tan, admitted to the Plaintiff that CIBC had exposed the Fund to the risk of Exchange Rate fluctuations, notwithstanding the fundamental objective and investment policy of the Fund to be currency-neutral;
24. The Defendant’s representative, Mr. Tan, did not advise the Plaintiff whether CIBC had changed the Fund from a currency-neutral investment to a “currency-exposed” investment deliberately or inadvertently, but he admitted that the unit holders were not notified of the change;

CIBC’s WRONGFUL BEHAVIOUR

25. On or about the CIBC Control Date, CIBC exposed the Fund to the additional risk of Exchange Rate fluctuations, thereby changing the Fund from a currency-neutral investment to a currency-exposed investment for Class Members;
26. Prior to changing the fundamental objective of the Fund, CIBC did not file a “material change” notice with the appropriate regulatory authorities as was required of CIBC as a reporting issuer;
27. Prior to assuming the additional risk of fluctuations in the Exchange Rate, CIBC did not notify (let alone obtain the consent of) the unit holders;
28. By exposing the Fund to the additional risk of fluctuations in the Exchange Rate, the Defendant speculated (with money belonging to the Class Members) that the U.S. dollar would increase relative to the Canadian dollar;
29. CIBC did so when the Canadian dollar was at or near an all-time low relative to the U.S. dollar;
30. To this day, CIBC continues to illegally expose the Class Members’ investments in the Fund to the risk of Exchange Rate fluctuations;
31. The foregoing wrongful Behaviour constitutes gross negligence;

DAMAGES

32. Once CIBC exposed the Fund to the risk of Exchange Rate fluctuations on the CIBC Control Date, any increase in the Canadian dollar relative to the U.S. dollar would cause an equivalent decrease in the Class Members’ returns relative to the returns achieved by the U.S. Indices;

33. The Class Members can only be deemed to have become aware that CIBC illegally exposed the Fund to the risk of Exchange Rate fluctuations on November 21, 2003 – the date the Motion for Authorization to institute the present class action was filed (the “**Knowledge Date**”);
34. The damages caused by CIBC’s Wrongful Behaviour became certain on the earlier of the date Class Members sold their units in the Fund, and the Knowledge Date;

i) Calculation of damages for Class Members who sold their units in the Fund prior to the Knowledge Date

35. For those Class members who sold their units in the Fund after March 28, 2002 and prior to the Knowledge Date, their losses are calculated as follows:
- a) The difference between the sale price of the units on the date they were sold and the price the units would have been had the Fund remained currency-neutral; and,
 - b) The amount of any fees necessarily incurred as a result of the sale of the units;

ii) Calculation of damages for Class Members who did not sell their units in the Fund as of the Knowledge Date

36. As of the Knowledge Date, the Class Members became aware of the risk that further fluctuations in the Exchange Rate would influence their returns;
37. From the CIBC Control Date to the Knowledge Date, the Class Members’ investments in the Fund achieved returns that were 17.32% lower than they would have been had CIBC not illegally exposed the Fund to the risk of Exchange Rate fluctuations;
38. Accordingly, for those Class Members who had not sold their units as of the Knowledge Date, their losses are calculated as follows:
- a) The difference between the value of their units on the Knowledge Date and the value their units would have had on the Knowledge Date if CIBC had not illegally exposed the Fund to Exchange Rate fluctuations; and,
 - b) The amount of any fees necessarily incurred as a result of the sale of the units after the Knowledge Date;
39. It is estimated that the 17.32% losses sustained by the Class Members as a result of CIBC’s illegal actions amount to a collective loss of \$22,000,000.00, the whole subject to exact proof of the losses to be determined by experts following examinations on discovery of CIBC’s representatives;

REMEDY

40. On behalf of the Class, the Plaintiff is therefore entitled to ask and does hereby ask that this Honourable Court:
- a) Declare that CIBC illegally exposed the Fund to the risk of Exchange Rate fluctuations;
 - b) Condemn CIBC to pay damages to the Class Members to compensate for the losses caused by fluctuations in the Exchange Rate from the CIBC Control Date until the earlier of the date the Class Members sold their units and the Knowledge Date;
 - c) Condemn CIBC to compensate the Class members for the fees incurred in order to sell units in the Fund;
 - d) Order CIBC to deposit the amount of \$22,000,000.00 plus interest and the additional indemnity provided by law, to be calculated as of March 28, 2002, into Court for distribution to the Class Members;

[...];

41. The present Class Action is well-founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Class Action;

[...]

CONDEMN the Defendant to pay the Plaintiff representative and all members of the Class, collectively, the amount of damages caused by CIBC exposing the Fund to the risk of Exchange Rate fluctuations from March 28, 2002 to the earlier of the date when Class members sold their units in the Fund and November 21, 2003 (the "**Knowledge Date**"), the whole with interest and the additional indemnity provided by law, calculated from and as of March 28, 2002;

ORDER the Defendant to deposit the amount of \$22,000,000.00 plus interest and the additional indemnity provided by law, to be calculated from and as of March 28, 2002, into Court for distribution to the Class members pursuant to a distribution plan to be decided by this Honourable Court;

[...]

CONDEMN the Defendant to pay Class counsel fees in an amount to be determined by this Honourable Court;

ORDER collective recovery of the total amount of the claims herein;

ORDER that the claims of the members of the Class be the object of individual claims in accordance with Articles 1037 to 1040 C.C.P.;

ORDER the Defendant to advise all of the Class Members of the present Class Action lawsuit;

ORDER the Defendant to pay the costs incurred in order to administer the distribution of the Class Members' claims;

CONDEMN the Defendant to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, experts, expertise and publication of notices.

MONTREAL, September 27, 2004

(sgd) Kugler Kandestin L.L.P.

KUGLER KANDESTIN L.L.P.

(sgd) Stein & Stein

STEIN & STEIN

ATTORNEYS FOR PETITIONERS