

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

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

**ORDER AWARDING ATTORNEYS’ FEES AND COSTS IN CONNECTION WITH  
ALLIED WORLD’S CONTEMPT AND VIOLATION OF THE BARTON DOCTRINE**

On January 12, 2017, the Court entered an Opinion and Order holding the Bermuda Insurers<sup>2</sup> in contempt for violating the temporary restraining order (“TRO”) issued by this Court on December 21, 2016. *See In re MF Global Holdings Ltd.*, 561 B.R. 608 (Bankr. S.D.N.Y. 2016) (order issuing temporary restraining order) [hereinafter “TRO Opinion”]; *In re MF Global Holdings Ltd.*, 562 B.R. 41 (Bankr. S.D.N.Y. 2017) (order holding Bermuda Insurers in contempt) [hereinafter “Contempt Opinion”]. On January 31, 2017, the Court entered an

<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> The Bermuda Insurers are Allied World Assurance Company Ltd. (“Allied World”), and Iron-Starr Excess Agency Ltd., Ironshore Insurance Ltd., and Starr Insurance & Reinsurance Limited (together “Iron-Starr”).

Opinion and Order finding that the Bermuda Insurers violated the *Barton* Doctrine by filing suit against the Plaintiffs in Bermuda without first seeking leave of this Court. *In re MF Global Holdings Ltd.*, 562 B.R. 866 (Bankr. S.D.N.Y. 2017) (order finding that the Bermuda Insurers violated the *Barton* Doctrine) [hereinafter “*Barton* Opinion”].

Following the issuance of these decisions, the Court entered a case management and scheduling order (the “Scheduling Order,” ECF Doc. # 122) setting forth, among other things, a schedule for briefing on the appropriate remedies for the Plaintiffs<sup>3</sup> on account of the Bermuda Insurers’ contempt and violation of the *Barton* Doctrine. (Scheduling Order ¶¶ 15, 16.) In accordance with the Scheduling Order, the Plaintiffs filed a *Memorandum of Law In Support of Award of Fees and Costs For The Bermuda Insurers’ Contempt and Violation of The Barton Doctrine* (the “Plaintiffs’ Application,” ECF Doc. # 135)<sup>4</sup> and a declaration in support (the “Wittstein Declaration,” ECF Doc. # 136). Through the Plaintiffs’ Application, the Plaintiffs sought fees and costs from the Bermuda Insurers on account of fees incurred by local Bermuda counsel in the Bermuda Court proceedings, fees incurred by counsel to the Plaintiffs in assisting local counsel and in this Court, and fees incurred in connection with defending against the Bermuda Insurers’ appeals of this Court’s orders. Plaintiffs sought to apportion fees incurred on account of the Bermuda Insurers’ *Barton* violation and contempt roughly equally between Allied World and Iron-Starr, seeking \$926,348.95 from Allied World, and \$879,013.95 from Iron-Starr.<sup>5</sup> After the Plaintiffs filed the Plaintiffs’ Application, the Plaintiffs and Iron-Starr settled

---

<sup>3</sup> The plaintiffs here are MF Global Holdings Ltd. (“MFGH”), as Plan Administrator, and MF Global Assigned Assets LLC (“MFGAA” and together with MFGH, the “Plaintiffs”).

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plaintiffs’ Application.

<sup>5</sup> Allied World alone was responsible for \$47,335.00 in fees incurred by the Plaintiffs.

the dispute between them. Accordingly, this Order relates solely to the Plaintiffs' Application as it pertains to Allied World.

Allied World then filed a short *Response to Plaintiffs' Application for Award of Fees and Costs* (the "Allied Response," ECF Doc. # 152). Allied World did not "challenge the reasonableness of an award of fees and costs against it in the amount of \$926,348.95." (Allied Response at 1.) The Plaintiffs then filed a reply brief (the "Plaintiffs' Reply," ECF Doc. # 153), seemingly reversing course and arguing that Allied World and Iron-Starr are jointly and severally liable for all fees and costs incurred by the Plaintiffs related to the *Barton* violation and contempt, and suggesting that, following the Plaintiffs' settlement with Iron-Starr, Allied World was responsible for paying all of the fees requested in the Plaintiffs' Application. In response, Allied World filed a sur-reply (the "Allied Sur-Reply," ECF Doc. # 160), arguing, among other things, that there is no basis to hold Allied World and Iron-Starr jointly and severally liable in this case, and that Allied World should only be required to pay the amount originally requested by the Plaintiffs in the Plaintiffs' Application.

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). Once an aggrieved party establishes the costs it was forced to incur as a result of the *Barton* violation, a court may then 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) (citation omitted).

Similarly, “[c]ivil contempt sanctions may . . . compensate for any harm that previously resulted.” *In re Chief Executive Officers Clubs, Inc.*, 359 B.R. 527, 534 (Bankr. S.D.N.Y. 2007) (citing *Nat’l Org. for Women v. Terry*, 159 F.3d 86, 93 (2d Cir. 1998) and *Weitzman v. Stein*, 98 F.3d 717, 719 (2d Cir. 1996)). As stated in the Contempt Opinion, “on a proper showing, the Court will impose monetary sanctions to compensate the Plaintiffs [in this case] for any harm that resulted from the contempt.” (Contempt Opinion at 21–22.)

As set forth in the *Barton* Opinion and Contempt Opinion, Allied World and Iron-Starr each violated the *Barton* Doctrine and each was held in contempt for violating the TRO. Over the course of these proceedings, the Plaintiffs were required to respond to both Allied World and Iron-Starr in this Court on account of the injunctions in place for each of the Bermuda Insurers. While Allied World and Iron-Starr made similar arguments throughout this case, counsel to Allied World and Iron-Starr each filed separate briefs, made appearances, and argued in furtherance of their respective positions. This required the Plaintiffs to analyze the arguments and pleadings put forth by both Allied World and Iron-Starr that stemmed from the *Barton* violations and contempt. The Plaintiffs now cannot justifiably hold Allied World accountable for time spent, for example, reviewing and analyzing briefs submitted by Iron-Starr, or responding to arguments put forth by Iron-Starr in Court.

Allied World and Iron-Starr each filed separate actions and sought separate injunctions in the Bermuda court against Plaintiffs to enforce arbitration agreements in separate contracts. (*See* ECF Doc. ## 7-2, 7-3.) And the two distinct Bermuda actions initiated by Allied World and Iron-Starr required the Plaintiffs to respond to each action. The separateness of the two Bermuda actions can readily be seen from Allied World’s decision, after this Court issued the preliminary

injunction, to seek declaratory relief from the Bermuda court, which Iron-Starr did not do.  
(Wittstein Decl. ¶ 10.)

In Plaintiffs' Application, Plaintiffs explained that the fees and costs incurred to date "should be divided equally between the Bermuda Insurers" (with one small exception). (Wittstein Decl. ¶ 9; *see also id.* ¶ 5.) And again, Allied World does not "challenge the reasonableness of an award of fees and costs against it in the amount of \$926,348.95." (Allied Response at 1.) Allied World made no effort to separate recoverable damages based on the contempt finding or the Barton Doctrine; it simply acknowledges that the amount originally sought by the Plaintiffs is reasonable. Therefore, it is unnecessary for the Court to separately parse the fees and costs attributable to each. Indeed, Plaintiffs wrote that there was "just cause" for this Court to direct that roughly equal division: \$879,013.95 for Iron-Starr and \$926,348.95 for Allied World. (Plaintiffs' Application, Ex. A.)

**IT IS HEREBY ORDERED THAT:**

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's contempt and violation of the *Barton* Doctrine; and the Court having jurisdiction to consider the Plaintiffs' Application 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 Plaintiffs' Application and other pleadings 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 Plaintiffs' Application having been provided to the Bermuda Insurers, pursuant to the Scheduling 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 Plaintiffs' Application is in the best interests of the Debtors' estates, their creditors, and all parties in interest, there is no just reason to delay entry of this Order, and that the legal and factual bases set forth in the Plaintiffs' Application and the Wittstein Declaration establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED** that the Plaintiffs' Application is granted to the extent set forth below; and it is further

**ORDERED** that Allied World shall pay the Plaintiffs a total of \$926,348.95. This amount represents Allied World's obligation to pay half of the fees and costs incurred by the Plaintiffs on account of the Bermuda Insurers' contempt and violation of the *Barton* Doctrine, other than with respect to the \$47,335.00 in fees incurred by the Plaintiffs solely on account of Allied World. Specifically, Allied World shall pay the Plaintiffs: half of the \$132,306.80 of fees and costs incurred by the Plaintiffs for representation by Bermuda counsel in the Bermuda actions; half of the \$1,179,680.00 in fees and \$29,471.89 in costs for the work performed by Jones Day for the Plaintiffs arising out of the *Barton* violation and to provide assistance to Bermuda counsel to the Plaintiffs, subject to an adjustment to account for the \$47,335.00 for which Allied World alone was responsible<sup>6</sup>; and half of the \$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; and it is further

---

<sup>6</sup> For the avoidance of doubt, \$93,422.50 of these \$1,179,680.00 in fees is attributable to the Bermuda Insurers' contempt, as described in the Plaintiffs' Application and the Wittstein Declaration and accompanying exhibits. Additionally, of the \$1,179,680.00 originally requested from the Bermuda Insurers, Allied World "alone [was] responsible for \$47,335.00 in fees related to its decision to seek new declaratory relief in Bermuda . . . ." (Wittstein Decl. ¶ 10.)

**ORDERED** that the \$926,348.95 to be paid by Allied World shall be paid within 14 days of the entry of this Order; and it is further

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

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

**IT IS SO ORDERED.**

Dated: June 22, 2017  
New York, New York

*Martin Glenn*  
\_\_\_\_\_  
MARTIN GLENN  
United States Bankruptcy Judge