

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PASHA S. ANWAR, et al., :

Plaintiffs, :

-against- :

FAIRFIELD GREENWICH LTD, et al., :

Defendants. :

This Document Relates to the :
Standard Chartered Cases

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ORDER

09 Civ. 118 (VM) (FM)

FRANK MAAS, United States Magistrate Judge.

The Standard Chartered Cases involve actions brought by private banking clients who are suing the Standard Chartered Bank International, Ltd. (“Standard Chartered”) for damages allegedly arising out of Standard Chartered’s recommendation that its clients invest in Fairfield Sentry or Fairfield Sigma, both of which were Madoff “feeder funds.” The Standard Chartered Cases have proceeded independently from other cases consolidated in this action, and a separate scheduling order was entered, requiring, in pertinent part, that, within thirty days of the completion of fact discovery, expert reports be served “regarding . . . each issue [as] to which a party bears the burden of proof at trial.” (ECF No. 602 ¶ 12). Rebuttal reports were to be served within forty-five days thereafter.

At the first stage of the process, the plaintiffs submitted two expert reports and Standard Chartered submitted none. Standard Chartered then timely submitted two rebuttal reports, parts of which discussed Standard Chartered’s alleged reliance on third-parties in performing due diligence regarding Fairfield Sentry.

The plaintiffs contend that the issue of reliance on third-parties is an affirmative defense as to which Standard Chartered bears the burden of proof and, thus, under the terms of the scheduling order, was not a proper subject for a rebuttal report. They argue that Standard Chartered therefore should have submitted its expert opinions as to this issue at the time when its expert reports were due, and that Standard Chartered’s failure to do so “games the system and has put the [p]laintiffs at an unfair, and wholly improper, disadvantage.” (Letter to the Court from Richard E. Brodsky, dated Dec. 21, 2012 (“Brodsky Dec. 21 Let.”), at 1). To remediate this harm, the plaintiffs seek an order striking from the rebuttal reports any reference to Standard Chartered’s reliance on third parties and barring its experts from testifying about that subject.

Judge Marrero previously decided that the state law claims in this case are governed by Florida law. Anwar v. Fairfield Greenwich Ltd., 745 F. Supp. 2d 360, 369 (S.D.N.Y. 2010). In their submissions, the plaintiffs have been unable to identify any case suggesting that the issue of reliance on third-parties necessarily must be pleaded as an affirmative defense under Florida law. Moreover, it appears that the plaintiffs opened the door for Standard Chartered's rebuttal concerning this issue, since their own experts' reports discuss Standard Chartered's reliance on certain third parties, albeit in the context of "analyzing [Standard Chartered's] anticipated defensive claim." (Brodsky Dec. 21 Let. at 5 n.4). The plaintiffs also have failed to identify any concrete harm that they have suffered as a consequence of Standard Chartered's allegedly improper submissions.

I therefore decline to strike the relevant portions of Standard Chartered's expert reports or to bar them from introducing testimony regarding reliance on third parties. The plaintiffs, however, shall be permitted to serve one or more reply expert reports limited to the issue of Standard Chartered's reliance on third-parties.

The plaintiffs' reply reports must be served by February 8, 2013.

SO ORDERED.

Dated: New York, New York
January 9, 2013


FRANK MAAS
United States Magistrate Judge

Copies to:

Hon. Victor Marrero
United States District Judge

All counsel (via ECF)