

Anwar et al v. Fairfield Greenwich Limited et al

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March 27, 2013

VIA FACSIMILE

The Honorable Victor Marrero
 United States District Court
 Southern District of New York
 500 Pearl Street
 New York, New York 10007

Re: *Anwar v. Fairfield Greenwich Ltd.*, Master File No. 09-0118 (VM)

Dear Judge Marrero:

We represent the *Morning Mist* Derivative Plaintiffs, who objected to the now-approved partial settlement in the above-matter. See ECF Nos. 1047, 1049, 1097. We respectfully request a pre-motion conference to address a motion for reconsideration, pursuant to Local Rule 6.3, in light of the Supreme Court's decision today in *Comcast Corp. v. Behrend*, No. 11-864, 2013 WL 1222646.


In *Comcast*, the Supreme Court reversed a class certification order because the plaintiffs' damages model failed to measure *only* those damages attributable to the putative class's claims.¹ Here, the settling parties have structured a settlement, among other things, to prevent the *Morning Mist* plaintiffs from prosecuting the derivative case against the Fairfield Greenwich defendants, even though (i) the *Anwar* plaintiffs cannot assert the derivative claims, and (ii) the derivative case is far stronger than the class case, and its damages are far larger than those here. Such a settlement, we submit, is improper under *Comcast*.

¹ See *Comcast*, at § III.A ("If [plaintiffs] prevail on their claims, they would be entitled only to damages resulting from reduced overbuilder competition, since that is the only theory of antitrust impact accepted for class-action treatment by the District Court."); *id.* (damages model "must be consistent with [plaintiffs'] liability case") (quotations and citation omitted).

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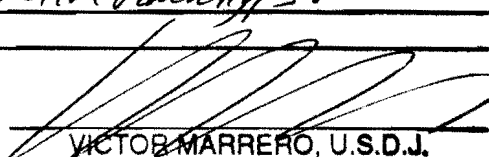
Accordingly, we respectfully request that the Court schedule a pre-motion conference.

Respectfully,


Robert A. Wallner

- cc: David A. Barrett, Esq. (by email)
- Helen V. Cantwell, Esq. (via email)
- Jonathan D. Cogan, Esq. (by email)
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- William Maguire, Esq. (via email)
- Sean F. O'Shea (via email)
- Glen Kurtz (via email)
- Edward M. Spiro (via email)
- Victor E. Stewart, Esq. (via email)
- Stephen A. Weiss, Esq. (via email)

The parties are directed to respond by 4-3-13, by letter not to exceed three (3) pages, to the matters set forth above by the Morning Most Derivative Plaintiffs.

SO ORDERED:
 3-29-13
 DATE  VICTOR MARRERO, U.S.D.J.

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MILBERG LLP