

Anwar et al. v. Fairfield Greenwich Limited et al

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April 24, 2013

BY FAX TO (212) 805-6382

Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Anwar, et al. v. Fairfield Greenwich Limited, et al.*,
09-cv-118 (VM)(THK)

Dear Judge Marrero:

We write on behalf of PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands"), in response to Headway Investment Corp.'s ("Headway") letter of April 22, 2013 requesting a pre-motion conference to renew its request to amend its complaint, by which Headway seeks, *inter alia*, to add PwC Netherlands as a defendant. This Court previously denied an identical request from Headway, as well as Headway's subsequent motion to reconsider.¹ Because the Court's reasoning in both the April 13 and June 22 Orders forecloses Headway's current request, and Headway points to no new circumstances justifying the relief sought, PwC Netherlands respectfully requests that the Court deny Headway's request for a pre-motion conference as well as its request to amend the complaint.

Headway's discussion of its request to add PwC Netherlands is confined to Footnote 7 of its letter. The footnote contains no facts that the Court did not previously consider that could justify revisiting Headway's request. Headway asserts that its failure to add PwC Netherlands previously was a "clerical error." Headway made the identical argument in its previous motion. (Headway Investment Corporation's Mem. Of Law In Supp. Of Its Mot. For Leave To Amend Compl. ("Headway Mot.") at 9, ECF 838 ("PwC Netherlands was mistakenly omitted from the Original Complaint").) Headway further argues that "there can be no prejudice

¹ Decision and Order, Apr. 13, 2012, ECF 853 ("April 13 Order"); Decision and Order, June 22, 2012, ECF 897 ("June 22 Order").

from joinder of PwC Netherlands, which need not lift a finger to respond to Headway's complaint until 'cousin' PwC Canada is required to, at some indeterminate time in the future." Again, Headway argued in its previous motion that there was no prejudice from joinder of PwC Netherlands. (Headway Mot. at 9 ("As to PwC Netherlands, there is absolutely no evidence of bad faith, dilatory motive, or prejudicial delay."))


This Court has already considered and rejected both of these arguments, having found that adding PwC Netherlands to the complaint would directly contravene the Court's case management orders. (April 13 Order at 9.) This is true regardless of the timing of any response date. Furthermore, this Court found that Headway acted with "undue delay in seeking to amend the *Headway... Complaint* and there has not been a showing of good cause for that delay," noting in particular that Headway's additional claims "could have been asserted in the original *Complaint* and are not dependent upon evidence revealed in the course of discovery." (*Id.* at 8.) In its June 22 Order on Headway's motion for reconsideration, this Court stated that Headway has not "offered sufficient justification for adding ... PwC Netherlands ... as defendant," explaining that PwC Netherlands and other entities "were known to or easily could have been identified by Plaintiffs when the action was first filed." (June 22 Order at 12.) The Court's reasoning in the April 13 and June 22 Orders is equally applicable to Headway's current request.

Accordingly, as Headway has failed to put forth any changed facts or law with respect to PwC Netherlands, Headway's request should be denied.

Respectfully submitted,



cc: Counsel for all parties (via email)

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by	
<i>defendant PwC Netherlands</i>	
SO ORDERED.	
<i>4-24-13</i>	
DATE	VICTOR MARRERO, U.S.D.J.