

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

ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Relates To: 09 cv 118 (VM)

File No. 09 CV 118 (VM)

**JOINT DECLARATION OF LEAD COUNSEL IN SUPPORT OF THE
PROPOSED GLOBEOP CLASS ACTION SETTLEMENT
AND FEE AND EXPENSE REQUESTS**

David A. Barrett, Robert C. Finkel and Victor E. Stewart, being duly admitted to the practice of law in the State of New York and to the Bar of this Court, do hereby declare under the penalties of perjury of the State of New York and the United States of America, as follows:

I. INTRODUCTION

1. We are members of the law firms Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP, respectively, Co-Lead Counsel for the Representative Plaintiffs (“Lead Counsel”).¹ Our firms are responsible for the prosecution of the claims in this Action.

2. We make this Joint Declaration in support of the Representative Plaintiffs’ motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of (i) certification of the GlobeOp Settlement Class² for purposes of the Settlement; (ii) the GlobeOp Stipulation of Settlement, dated as of August 27, 2013 (the “Stipulation”), providing for payment of \$5,000,000 to establish a settlement fund (the “GlobeOp Settlement Fund”); (iii) the proposed Plan of Allocation of the Net Settlement Fund among Settlement Class Members who submit valid claims; and (iv) Lead Counsel’s application for an award of attorneys’ fees and reimbursement of expenses. Also submitted herewith is a Memorandum of Law In Support of Plaintiffs’ Motion for Final Approval of the GlobeOp Settlement and an Award of Attorneys’ Fees and Expenses.

¹ The Representative Plaintiffs are: Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen’s School. The Representative Plaintiffs are referred to herein as “Plaintiffs.”

² Unless otherwise indicated, all capitalized terms are defined in the August 27, 2013 GlobeOp Stipulation of Settlement filed with the District Court on August 29, 2013.

3. The Stipulation is between the Representative Plaintiffs, on behalf of the GlobeOp Settlement Class, on the one hand, and defendant GlobeOp Financial Services LLC (“GlobeOp”) and the Insurance Carriers, on the other hand. Plaintiffs’ claims against (i) the PwC Defendants (PricewaterhouseCoopers LLP Canada and PricewaterhouseCoopers Accountants N.V.) (Netherlands) (collectively, “PwC”); and (ii) the Citco Defendants (Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda), and The Citco Group Limited) (collectively, “Citco”) are not resolved by the GlobeOp Settlement and will continue to be prosecuted.

4. This Settlement resolves all claims against GlobeOp that were asserted or could have been asserted against GlobeOp by limited partners in the two investment funds Greenwich Sentry L.P., and Greenwich Sentry Partners, L.P. (together the “Domestic Funds”).

5. The GlobeOp Settlement is the second partial settlement in this Action, separate from the previously approved settlement of Plaintiffs’ claims against the Fairfield Greenwich (“FG”) Defendants (the “FG Settlement”). The FG Settlement provided for a minimum cash payment of \$50,250,000 and an additional contingent cash consideration of up to \$30,000,000, as well as other consideration. The Court approved the FG Settlement by Final Judgment and Order dated March 25, 2013. The Final Judgment is now on appeal to the Second Circuit Court of Appeals.

6. The Stipulation defines as the GlobeOp Settlement Class to include “all Persons who purchased or held interests in the Domestic Funds from October 31, 2003 through

September 1, 2006,³ who were investors in the Domestic Funds as of December 10, 2008 and who suffered a Net Loss of principal invested in the Domestic Funds, excluding (i) those Persons who timely and validly requested exclusion from the GlobeOp Settlement Class and who did not validly revoke such exclusion; (ii) those Persons who have been dismissed from this Action with prejudice; and (iii) the FG Defendants, GlobeOp, and the Non-Settling Defendants, and any entity in which those Persons have a controlling interest, and their officers, directors, affiliates, employees, legal representatives and immediate family members, and heirs successors, subsidiaries and assigns of such Persons.”

7. As part of a joint settlement, and to achieve global peace from further litigation, the Insurance Carriers agreed to pay on behalf of GlobeOp an additional \$5,000,000 to resolve a parallel state court action brought by the Litigation Trust for the Domestic Funds. That state court settlement will benefit GlobeOp Settlement Class Members by increasing recoveries that they obtain through the bankruptcy proceedings for the Domestic Funds.

8. Lead Counsel have identified approximately fifty-five investors who are members of the GlobeOp Settlement Class. Notice of the GlobeOp Settlement was provided to those GlobeOp Settlement Class Members pursuant to Notice mailed to class members on September 24, 2013, as well as a press release issued over PR Newswire on September 30, 2013. Pursuant to 28 U.S.C. § 1715, GlobeOp sent notice of the settlement to the appropriate State and Federal officials on September 24, 2013.

³ Although GlobeOp ceased acting as the administrator effective August 31, 2006, new limited partnership interests were not issued until the first day of the following month. Plaintiffs consider that given the totality of circumstances, it is appropriate to end the class period on September 1, 2006 rather than August 31, 2006.

9. The last date to file objections to the proposed Settlement or the request for fees and expenses is October 25, 2013. To date, there have been no objections filed to the proposed settlement or to the request for fees and expenses.

10. In the Second Consolidated Amended Complaint (“SCAC”), Plaintiffs asserted claims against GlobeOp under New York law and common-law theories for breach of fiduciary duty (Count 29), gross negligence (Count 30), and negligent misrepresentation (Count 31). *See* SCAC, ¶¶ 344-47 and 541-56. Those claims arose out of GlobeOp’s role as the administrator of the Domestic Funds during the period October 31, 2003 through August 31, 2006. Plaintiffs contend that the administrator of the Domestic Funds, GlobeOp had fiduciary and professional responsibilities to verify the existence of the Domestic Funds’ assets, including by contacting sources that were independent of Madoff. Plaintiffs contend that GlobeOp’s failure to verify the existence of those assets contributed to plaintiffs’ losses.⁴

11. By order of the Court dated August 18, 2010, the Court granted GlobeOp’s motion to dismiss Count 30 (gross negligence), and denied GlobeOp’s motion to dismiss Counts 29 and 31 (breach of fiduciary duty and negligent misrepresentation). *See* 728 F. Supp. 2d 372, 446-49 (S.D.N.Y. 2010).

12. Although this Court sustained those two claims on the motion to dismiss, GlobeOp continued to argue, among other things, that (i) plaintiffs’ claims were derivative and owned by the Domestic Funds, which were in bankruptcy, and that the Domestic Funds, through a litigation trust, were actively prosecuting those claims against GlobeOp, (ii) GlobeOp

⁴ Plaintiffs had also brought a separate Count (Count 33) against all defendants for unjust enrichment. Plaintiffs discontinued that claim against GlobeOp during briefing on the motion to dismiss, among other reasons, because GlobeOp had been the administrator of the Domestic Funds for less than three years and the value of the unjust enrichment claim against GlobeOp was less than \$1 million.

acted with due care and did not act negligently, (iii) GlobeOp did not owe fiduciary duties to investors in the Domestic Funds, (iv) the administrative agreements between GlobeOp and the Domestic Funds absolved GlobeOp of all liability except in cases of “fraud, gross negligence, or willful misconduct,” (v) as stated on account statements disseminated to investors, GlobeOp was entitled to rely on the accuracy of investment information provided to it by the FG Defendants, the Funds, and Madoff and had no duties to make further inquiries, (vi) plaintiffs’ exclusively state law claims against GlobeOp were barred by the Securities Litigation Uniform Standards Act (“SLUSA”), (vii) class certification was not warranted, among other things, because plaintiffs had failed to establish numerosity on their claims against GlobeOp, and individual issues of reliance predominated over common issues of law or fact, (viii) GlobeOp had no liability to any investor who acquired shares in the Domestic Funds before or after GlobeOp acted as administrator of those Funds, (ix) investors had conducted their own due diligence and were contributorily negligent in failing to recognize the Madoff Ponzi scheme, (x) other persons, including Madoff, the FG Defendants, the Domestic Funds’ auditors, and Citco had a much greater percentage of culpability for plaintiffs’ losses than GlobeOp, and (xi) plaintiffs’ losses were mitigated by the recovery in the FG Settlement, tax benefits and the anticipated recovery in bankruptcy proceedings. GlobeOp vigorously maintains that the administrative services it performed for the Domestic Funds were a very small part of its overall business, and that GlobeOp did not know about Madoff’s wrongdoing until it was revealed to the public in December 2008.

13. Although plaintiffs had significant arguments in opposition to GlobeOp with respect to all of the foregoing issues, plaintiffs recognized that they could lose one or more of these issues on summary judgment, at trial, or on appeal, and that there was a possibility that

class members would obtain no recovery whatever. The Settlement was reached after four and one-half years of hard-fought litigation and two full days of mediation, as a result of which Lead Counsel were fully familiar with the issues, strengths and weaknesses of plaintiffs' claims, among other things, having (i) litigated the initial motions to dismiss the SCAC, motions to reargue the Court's decision on that motion and a motion for class certification, (ii) having reviewed the documents produced by GlobeOp in litigation, and conducted four depositions of GlobeOp witnesses, and (iii) having prepared two mediation statements, and analyzed the separate mediation statements of GlobeOp and the Insurance Carriers.

14. The Settlement, if consummated, will provide an immediate cash benefit to the Settlement Class defined in the Stipulation, which counsel and the Representative Plaintiffs believe significantly outweighs the risks and certain delay of continued litigation against GlobeOp.

15. Lead Counsel estimate that the \$5,000,000 cash settlement is equivalent to approximately 11% of provable damages against GlobeOp, and will add to the benefits that GlobeOp Settlement Class members will receive from the FG Settlement, and from the settlement of the state court litigation against GlobeOp and recoveries from the Funds' bankruptcy proceedings. It is an excellent recovery given the legal and factual obstacles to any recovery against GlobeOp in this Action.

II. HISTORY OF THE ACTION

A. The Domestic Funds

16. GlobeOp was hired on October 31, 2003 by Fairfield Greenwich (Bermuda) Ltd. ("FGBL") and Greenwich Sentry L.P. and on May 1, 2006 by FGBL and Greenwich Sentry

Partners L.P., to act as the Funds' third-party administrator. FGBL, as general partner, controlled the Funds.

17. Among the services provided by GlobeOp to investors on a monthly basis was the calculation of the value of investors' limited partnership interests in the Funds and the dissemination of account statements reflecting those calculations.

18. GlobeOp was terminated as the administrator of both funds effective August 31, 2006. GlobeOp was succeeded as the Domestic Funds' administrator by Citco Fund Services (Europe) B.V. effective September 1, 2006. GlobeOp never acted as the Domestic Funds' Custodian.

19. The Domestic Funds invested virtually all of the limited partners' assets with Bernard L. Madoff Investment Securities ("BLMIS"). These investments were lost because, as revealed in December 2008 when Madoff was arrested, BLMIS was operating a Ponzi scheme and the assets purportedly controlled by BLMIS did not exist.

B. The Action and Consolidation

20. Plaintiffs' claims against GlobeOp are part of the consolidated *Anwar* class action, the first of constituent action of which was filed on December 19, 2008, by plaintiffs Pasha S. Anwar and Julia Anwar, on behalf of themselves and all others similarly situated, in the Supreme Court of the State of New York, entitled *Anwar v. Fairfield Greenwich Group, et al.*, No. 603769/2008 ("*Anwar*"). On January 7, 2009, *Anwar* was removed by Defendants to this Court. Numerous other actions against Defendants were filed and consolidated by this Court under the *Anwar* action.

21. On January 30, 2009 the Court appointed Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP as Interim Co-Lead Counsel to act on behalf of all Plaintiffs in the Action pursuant to Fed. R. Civ. P. 23(g)(3).

C. The Initial Consolidated Complaint

22. Lead Counsel conducted a detailed investigation of the facts, including the disclosures and statements made to investors in the Domestic Funds and the conduct of the various defendants in their duties in connection with the offering and management of the Funds. Among other things, Lead Counsel investigated GlobeOp's relationship with Madoff, Madoff's role in the management and custody of the Domestic Funds' assets and indicators of potential fraud in Madoff's investment advisory and asset management operation that could have been known to GlobeOp. Lead Counsel also analyzed GlobeOp's legal obligations and duties and the potential causes of action available to Plaintiffs.

23. On April 24, 2009, Lead Counsel filed the Consolidated Amended Complaint (the "Consolidated Complaint"), asserting common law claims under New York law against the FG Defendants, Citco and GlobeOp.

24. On September 29, 2009, Representative Plaintiffs filed the SCAC, which consolidated federal securities claims and claims against PwC and asserted claims in one consolidated complaint on behalf of a proposed class of investors in the Domestic Funds and two other off-shore funds against the FG Defendants, PwC, Citco and GlobeOp. Plaintiffs asserted claims against GlobeOp in the SCAC under common-law theories for breach of fiduciary duty (Count 29), gross negligence (Count 31), and negligent misrepresentation (Count 33). The SCAC alleged that investors in the Domestic Funds would have avoided their ultimate losses if GlobeOp had not violated its fiduciary duties and acted negligently in failing

to detect and alert plaintiffs to material facts evidencing a Ponzi scheme. The claims asserted against GlobeOp included claims on behalf of investors who held shares in the Domestic Fund as of August 31, 2006, when GlobeOp ceased acting as the administrator.

D. Defendants' Motions to Dismiss

25. On December 22, 2009, all Defendants moved to dismiss the SCAC, filing voluminous briefing and exhibits in support. In particular, GlobeOp's motion to dismiss asserted multiple arguments including:

- a. Plaintiffs' state law non-fraud claims were barred by the New York State Martin Act;
- b. Plaintiffs failed to allege facts sufficient to support a claim of gross negligence;
- c. Plaintiffs failed to adequately allege that GlobeOp owed them a duty (fiduciary or otherwise), which is an essential element of breach of fiduciary duty, negligence and gross negligence claims;
- d. Plaintiffs' claims were derivative and belonged to the Funds, and as such Plaintiffs were required either to make a demand on the Funds or plead facts demonstrating that such demand would be futile;
- e. Plaintiffs' claims were subject to an arbitration clause contained in the administrative services agreement between GlobeOp and Greenwich Sentry;
- f. The New York State economic loss rule barred Plaintiffs' tort claims.

26. On March 23, 2010, plaintiffs filed a 107-page opposition to all Defendants' motions to dismiss the SCAC, as well as separate oppositions to the motions of GlobeOp, Citco and PwC. The principal opposition brief addressed the issues in common among defendants' motions, including GlobeOp's motion.

27. On May 21, 2010, GlobeOp filed a Reply Memorandum In Further Support of its Motion to Dismiss, and plaintiffs filed a Sur-Reply Brief.

E. The Court's Decisions on the Motions to Dismiss

28. By Orders dated July 29, 2010 and August 18, 2010, the Court granted in part and denied in part the motions to dismiss the SCAC. The July 29, 2010 Order, 728 F.Supp.2d 354, rejected defendants' arguments that the Martin Act preempted Plaintiffs' common law negligence claims. The August 18, 2010 Order, 728 F.Supp.2d 372, addressed the balance of defendants' motion to dismiss arguments, ruling, *inter alia*, that Plaintiffs adequately pled negligence claims under New York law against certain defendants, including GlobeOp and that Plaintiffs had adequately pleaded claims for breach of fiduciary duty against certain defendants including GlobeOp. This Court, however, dismissed plaintiffs' claims against GlobeOp for gross negligence (Count 31).

29. The Court subsequently denied two separate motions to reargue the August 18, 2010 Order (800 F. Supp. 2d 571 and 2012 WL 345478) (insofar as the motions applied to GlobeOp). The Court granted the second motion to the extent of limiting the claims against PwC to subsequent investor and holder claims asserted by existing investors in the Funds at the times PwC issued its audit reports.

F. Plaintiffs' Motion for Class Certification

30. On March 1, 2011, the Representative Plaintiffs served a motion for class certification requesting the Court to certify the Action as a class action and to appoint them as class representatives.

31. Defendants, including GlobeOp, sought extensive discovery in connection with the class certification motion, including from both the proposed Representative Plaintiffs and

additional non-class representative Named Plaintiffs who had joined the SCAC in an individual capacity.

32. Plaintiffs opposed discovery of the Named Plaintiffs other than the Representative Plaintiffs and the parties exchanged letter briefs to Magistrate Judge Katz on Defendants' entitlement to take discovery of the non-Representative Plaintiffs.

33. At a discovery hearing conducted on April 19, 2011, Judge Katz ordered that Defendants be limited to identifying twenty non-Class Named Plaintiffs to respond to paper discovery. Plaintiffs subsequently agreed to produce seven of those twenty Named Plaintiffs for deposition.

34. Following the extensive discovery on class certification issues, all defendants, including GlobeOp, opposed the Motion for Class Certification, filing a joint brief in opposition, as well as separate opposition briefs and voluminous exhibits on January 13, 2012.

35. Defendants, including GlobeOp, in opposing class certification, repeated many of the same arguments as on the motion to dismiss, including that certain of Plaintiffs' claims were derivative and belonged to the Funds. In addition, GlobeOp argued that (i) plaintiffs failed to establish numerosity as to the claims against GlobeOp, but rather had impermissibly lumped those claims in with their much larger claims against the other defendants;⁵ (ii) individual issues of reliance and damages precluded class certification; and (iii) individual issues precluded certification of fiduciary duty or negligence claims.

⁵ Whereas the purported asset balances of the Domestic Funds approximated \$140 million as of August 2006, the reported assets of the off-shore funds at times exceeded \$7 billion.

36. On April 27, 2012, the Class Representatives made their reply submissions in further support of class certification. Defendants subsequently were permitted to file a Sur-Reply.

37. In a Decision and Order of February 25, 2013 (289 F.R.D. 105), this Court certified a litigation class consisting of investors who had asserted claims against GlobeOp and the other defendants as follows:

All shareholders/limited partners in Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. as of December 10, 2008 who suffered a net loss of principal invested in the Funds.⁶

38. On March 11, 2013, GlobeOp filed a Rule 23(f) Petition in the Second Circuit Court of Appeals arguing, among other things, that the District Court had not considered the state law negligence and breach of fiduciary duty claims against GlobeOp separately from the securities and common law fraud claims asserted against the other Defendants.⁷

39. As part of the Settlement, GlobeOp agreed to withdraw its Rule 23(f) Petition and to consent to certification of a GlobeOp Settlement Class as defined herein in Paragraph 5.

40. The GlobeOp Settlement Class separates out the claims against GlobeOp from the Class certified by this Court in the February 25, 2013 Class Certification Decision, but is otherwise substantively identical to the class certified by the Court. The GlobeOp Settlement

⁶ The class certification decision excluded from the class investors from certain foreign countries. Those exclusions, however, do not apply to the claims against GlobeOp, in that all investors in the Domestic Funds are from the United States.

⁷ The Non-Settling Defendants filed similar Rule 23(f) Petitions in the Court of Appeals. Those Petitions were granted on June 14, 2013 and accordingly, appeals from the certification of claims against PwC and Citco are proceeding through the appellate process.

Class satisfies the requirements of Fed. R. Civ. P. 23(a) and (b)(3), as previously determined by this Court.

G. Merits Discovery

41. Upon substantial denial of the motions to dismiss, and while the class certification motion was pending, the parties engaged in extensive discovery. Among other things, the parties exchanged their initial disclosures pursuant to Rule 26(a), and Plaintiffs served requests for the production of documents on the Defendants.

42. Plaintiffs engaged in extensive negotiations with defense counsel (including GlobeOp's counsel) concerning the scope, timing and procedure for the production of documents, including the search terms to be used in conducting electronic discovery.

43. Defendants subsequently produced, and Plaintiffs' Counsel reviewed, more than nine million pages of documents, including approximately 230,000 documents produced by GlobeOp. Plaintiffs' Lead Counsel reviewed and produced to defense counsel more than 75,000 pages of documents on behalf of the Representative Plaintiffs and other Named Plaintiffs.

44. Because of the volume of defendants' document production, Plaintiff's Counsel established an electronic database with an outside vendor that allowed Plaintiffs' Counsel to review, code, organize, search, and retrieve the documents electronically. Examination and analysis of the documents required a massive effort by teams of attorneys to review the millions of pages of documents, to analyze, code, and organize them, to identify the documents that proved Plaintiffs' allegations, to identify relevant witnesses, and to establish and execute procedures to identify and ascertain additional necessary information.

45. As of June 14, 2013, when Plaintiffs and GlobeOp and the Insurers reached a settlement in principle, Plaintiffs had conducted or participated in approximately ninety depositions of defendants and third-party witnesses, including conducting four depositions of GlobeOp personnel. Plaintiffs were scheduled to conduct an additional six GlobeOp depositions prior to the June 30, 2013 completion date for fact discovery.

46. Merits discovery with respect to plaintiffs' claims against PwC and Citco is complete (except for limited matters still in dispute), and Plaintiffs and the Non-Settling Defendants currently are engaged in expert discovery.

II. SETTLEMENT NEGOTIATIONS AND TERMS OF THE SETTLEMENT

A. The Negotiations

47. Beginning in July 2012, and then more intensively between November 2012 and June 11, 2013, while discovery was ongoing, the Settling Parties engaged in extensive, arms'-length negotiations in an attempt to resolve the claims against GlobeOp.

48. A formal mediation process supervised by Judge Daniel Weinstein (ret.) under the aegis of JAMS, took place and included two day-long, in-person negotiating sessions on January 31, 2013 and June 11, 2013, as well as numerous telephone conferences with the mediator. The Insurance Carriers also participated in the mediation.

49. The Litigation Trustee appointed by the U.S. Bankruptcy Court for the Southern District of New York pursuant to the Funds' First Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code, Case No. 10-16229 [Dkt. No. 211 (September 26, 2011)] (the "Bankruptcy Proceedings"), also participated in the mediation process. The Litigation Trustee, as successor in interest to the Funds, had asserted direct claims on behalf of the Domestic Funds against GlobeOp in New York State court. *See Walker, Truesdell, Roth &*

Associates, Inc. v. GlobeOp Financial Services LLC, et al., Index Nos. 600498/2009 and 600469/2009 (Sup. Ct. N.Y. County) (the “State Court Action”).

50. All parties, including the Representative Plaintiffs, the Litigation Trustee, GlobeOp, and the Insurance Carriers submitted detailed mediation and supplemental mediation statements. The parties strenuously argued their respective legal and factual positions throughout the mediation process.

B. The Cash Settlement Terms

51. At the conclusion of the mediation, the Insurance Carriers agreed, on behalf of GlobeOp, to pay \$10,000,000 to obtain a global settlement fully resolving all claims asserted against it in both this Action and the State Court Action. Of this amount, \$5,000,000 was allocated to the *Anwar* action for the benefit of the GlobeOp Settlement Class and \$5,000,000 to the Litigation Trustee, subject in each case to the condition that the other settlement be consummated.

III. THE STIPULATION AND PRELIMINARY APPROVAL ORDER

A. The Stipulation and Preliminary Approval Hearing

52. On August 27, 2013, the Settling Parties executed a Stipulation of Settlement, which was filed August 29, 2013, providing for the settlement of all claims asserted against GlobeOp by Plaintiffs in this action, and a motion seeking preliminary approval of the Settlement. This Court entered a Preliminary Approval Order providing for class notice and scheduling a hearing to consider final approval of the Settlement for November 22, 2013.

B. The Terms of the Stipulation

53. Under the terms of the proposed Settlement, the aggregate amount of \$5,000,000 will be paid into the GlobeOp Settlement Fund. These funds (less Court-approved attorneys’

fees and reimbursement of expenses) will be paid to the GlobeOp Settlement Class pursuant to the Plan of Allocation. As noted above, the GlobeOp Settlement Class was defined in the Stipulation ¶ 1(u) to include “all Persons who purchased or held interests in the Domestic Funds from October 31, 2003 through September 1, 2006, who were investors in the Domestic Funds as of December 10, 2008 and who suffered a Net Loss of principal invested in the Domestic Funds.”

54. In addition to amounts that they would receive under the GlobeOp Settlement, eligible GlobeOp Settlement Class Members who have submitted claims in Bankruptcy Court are likely to receive additional cash distributions from the Bankruptcy Proceedings. These additional distributions may include proceeds from the separate \$5,000,000 settlement with GlobeOp that the Litigation Trustee made contemporaneously with this Settlement, as well as distributions to the Funds from the bankruptcy proceedings of Bernard L. Madoff Investment Securities.

55. This is a partial settlement only. Plaintiffs will continue to prosecute pending claims against (i) the PwC Defendants (PricewaterhouseCoopers LLP Canada, PricewaterhouseCoopers Accountants Netherlands N.V), and (ii) the Citco Defendants (Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda), The Citco Group Limited)).

56. The Settlement with GlobeOp will simplify the prosecution of the Action and enable Plaintiffs to concentrate their efforts on litigating their substantial claims against PwC and Citco.⁸

⁸ PwC audited the Domestic Funds’ financial statements beginning in fiscal 2005 and Citco began acting as the administrator of the Domestic Funds effective September 2006.

57. The GlobeOp Settlement provides for a court order barring the Non-Settling Defendants and other similarly situated Persons from asserting claims for contribution, indemnification or other similar claims against GlobeOp and other Released Parties. In light of the release of these potential claims against GlobeOp, the Stipulation provides that “[a]ny final verdict or judgment that may be obtained [by a Settlement Class Member against such Persons] shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties; or (ii) the gross monetary consideration provided to such Representative Plaintiff or other GlobeOp Settlement Class Member or Members pursuant to this Settlement.” *See* Stipulation, ¶ 17. Provisions of this nature are customary and were approved by this Court in entering the Final Judgment approving the FG Settlement.

C. GlobeOp’s Right to Terminate the Settlement

58. The GlobeOp Stipulation provides GlobeOp Settlement Class Members the right to request exclusion from the Settlement on or before October 25, 2013.

59. GlobeOp did not want to settle Plaintiffs’ claims for substantial consideration only to be named as defendants by investors with significant net losses who request exclusion from the Settlement Class.

60. Accordingly, the Stipulation provides for a customary “blow” provision that allows GlobeOp to terminate the Settlement in the event that Settlement Class Members with aggregate Net Losses above a certain threshold request exclusion from the Class.

61. To date, no GlobeOp Settlement Class Members have sought exclusion from the Settlement Class.

D. Plaintiffs' Percentage Recovery from the Settlement

62. Estimates of the percentage recovery on the potential claims that may be filed vary depending on a number of factors. The proposed Plan of Allocation for the Settlement provides that claims by Class Members based on investments in the Fund after September 1, 2006 (when GlobeOp ceased acting as the administrator) shall be discounted by approximately 4% per month for each month after September 2006. Plaintiffs' analyses of Proofs of Interest filed in the Domestic Funds' bankruptcy proceedings, Proofs of Claim submitted in the prior FG Settlement, other information available through discovery, and the terms of the Plan of Allocation, indicate that the aggregate amount of Recognized Losses of all Authorized Claimants is likely to be approximately \$46 million.⁹

63. Based on the \$46 million estimate, Plaintiffs approximate (assuming that all GlobeOp Settlement Class Members file claims) that GlobeOp Settlement Class Members will receive from the Settlement Fund, before deduction of Court-awarded attorneys' fees and expenses, approximately 11% of their Recognized Loss computed pursuant to the Plan of Allocation (excluding the benefits that Settlement Class Members may receive from the separate FG Settlement, the \$5,000,000 settlement of the State Court Action and other distributions from the Bankruptcy Proceedings, and any tax benefits or other recoveries from third parties). That percentage recovery, however, could be greater if GlobeOp Settlement

⁹ Plaintiffs' estimate of the potential claims that may be submitted by class members is based on the Plan of Allocation for the Settlement Fund. The Plan of Allocation provides a Recognized Loss formula that weighs the 2003-06 investor and holder claims at 100% of their Net Losses and the post-September 1, 2006 investor claims from 96% to 4% of their Net Losses depending on the length of time that had passed after GlobeOp's August 31, 2006 termination as administrator until the subsequent investment was made. The reduced weighting for subsequent investor claims reflects GlobeOp's defenses that those investments were made while Citco, rather than GlobeOp, was acting as the administrator of the Funds.

Class Members file claims valued in the aggregate at less than \$46 million and could be lower to the extent that the aggregate Recognized Losses of Settlement Class Members who file claims exceeds \$46 million.

E. This Court's Preliminary Approval Order

64. On August 29, 2013, Plaintiffs filed a motion in the District Court to preliminarily approve the GlobeOp Settlement. The Court entered the Preliminary Approval Order on September 10, 2013.

65. The Preliminary Approval Order appointed Rust Consulting, Inc. as the Claims Administrator and directed the mailing of a Notice and Proof of Claim forms and the publication of Summary Notice in *PR Newswire*.

66. The Mailed Notice was mailed by the Claims Administrator on September 24, 2013. It provided investors with detailed information with respect to the proposed GlobeOp Settlement, and the request of Plaintiffs' Counsel for payment of fees and expenses. Among other things, Class Members were advised of the dates to request exclusion from the Class (October 25, 2013), to object to the proposed GlobeOp Settlement or fee and expense requests (October 25, 2013) and to file a Proof of Claim (December 23, 2013).

67. Accompanying this Joint Declaration as Exhibit A is the Affidavit of Mailing of Daniel Polizzi of Rust Consulting, attesting to the mailing and publication of the Notice and Summary Notice pursuant to the Preliminary Approval Order.

68. To date, Lead Counsel have received no objections to the proposed GlobeOp Settlement or requests for exclusion from the Class. The Preliminary Approval Order directs that Lead Counsel respond to all objections no later than November 8, 2013. Lead Counsel will address any objections at that time, if necessary.

IV. REASONS FOR THE SETTLEMENT

69. All seven Representative Plaintiffs and all of Plaintiffs' Lead Counsel, who have extensive experience in securities and complex shareholder class-action litigation, believe that the GlobeOp Settlement provides the GlobeOp Settlement Class with real and certain benefits now and eliminates the risk of coming up empty-handed following what would be years of further uncertain litigation, including disposition of class certification appeals on the claims against GlobeOp, motions for summary judgment, and if summary judgment is not granted, a contested trial and likely appeals involving GlobeOp.

70. Plaintiffs, in proposing that the Court approve the GlobeOp Settlement as fair, reasonable and adequate to the Settlement Class, have considered, among other factors, Plaintiffs' ability to prevail on the contested factual and legal issues summarized herein (*see, e.g.,* ¶ 12, *supra*). In addition, Plaintiffs' Lead Counsel considered that, by reducing the number of defendants and defense counsel in the litigation, and the factual and legal issues in dispute, the GlobeOp Settlement will have a beneficial effect on Plaintiffs' ability to successfully litigate the remaining claims against the Non-Settling Defendants.

71. Plaintiffs' Lead Counsel determined, based on their assessment of the legal and factual risks of continuing the Action against GlobeOp and proving their claims at trial, that the proposed settlement is in the best interests of the GlobeOp Settlement Class.

V. THE PLAN OF ALLOCATION

72. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement entered by this Court on September 10, 2013, and as set forth in the Notice of Proposed GlobeOp Partial Settlement of Class Action and Settlement Fairness Hearing (at 8), all Class Members who wish to participate in the distribution of the GlobeOp

Settlement Fund must submit a valid Proof of Claim form so that it is received by the Claims Administrator no later than December 23, 2013.

73. Under the Plan of Allocation, the Net Loss for each Settlement Class Member who submits a valid Proof of Claim is the Net Loss of principal with respect to each Fund. Net Loss is defined in the Plan of Allocation as “the total cash investment made by a Claimant in a [Domestic] Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or withdrawals or recoveries by that Claimant from or with respect to the same Fund.” If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class Members who submit timely, valid Proof of Claim forms.

74. The Plan of Allocation also considers that class members who held Domestic Fund shares as of September 1, 2006, and subsequently acquired additional shares, would arguably have valid claims against GlobeOp arising from those subsequent purchases made in reliance upon previous account statements received from GlobeOp. Thus, the Plan of Allocation contains a Recognized Loss formula that provides for a 4% decrease per month in the amount counted toward calculation of a Class Member’s Recognized Loss with respect to subsequent investments made after September 2006 in the Domestic Funds.

75. Lead Counsel submit that the Plan of Allocation is fair, reasonable, and adequate and should be approved by the Court.

VI. LEAD COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE

A. Request for Attorneys’ Fees and Reimbursement of Expenses

76. The Class Notice informed Settlement Class Members that Plaintiffs’

Lead Counsel would ask the Court to approve payment from the Settlement Fund of attorneys' fees of up to 25% of the Settlement Fund and for reimbursement of expenses that were advanced by Plaintiffs' Counsel directly relating to litigation of the claims against GlobeOp not to exceed \$25,000. To date, plaintiffs have received no objections to that fee or expense request.

77. The attorneys' fees and expenses requested represent payment to Plaintiffs' Lead Counsel and other counsel involved in the Action for their efforts in achieving this Settlement and the risk in undertaking this representation on a wholly contingent basis. Since the case began in 2008, Plaintiffs' Counsel have undertaken enormous work necessary to prepare the case for trial.

78. Because the legal and factual issues with respect to Plaintiffs' claims were litigated in a single consolidated action, Plaintiffs' Counsel did not keep separate time records by defendant. Lead Counsel believe, however, that a great percentage of the work expended on the Action since its inception contributed to the resolution of the claims against GlobeOp. During this time, Lead Counsel have, *inter alia*: (i) conducted an extensive investigation of public and non-public information with respect to the Class' claims including the claims against GlobeOp; (ii) prepared initial complaints, the Consolidated Amended Complaint, and the subsequent SCAC; (iii) overcome in large part Defendants' motions to dismiss the SCAC; (iv) secured entry of a case management plan and scheduling order; (v) conducted extensive discovery including serving and responding to demands, including third party subpoenas, and obtaining and producing documents; (vi) responded to detailed interrogatories served on the Representative Plaintiffs and some 20 additional named plaintiffs, (vii) conducted over ninety depositions of persons affiliated with Defendants to date, including four depositions of

GlobeOp witnesses, and defended 20 depositions of Representative and other Named Plaintiffs, including two depositions of GlobeOp Settlement Class Members; (vii) successfully litigated the class certification motion, including filing a Memorandum and Reply Memorandum in Support of Plaintiffs' motion for class certification, accompanied by a compendium of 62 factual exhibits; (viii) briefed two motions by Defendants to reargue denial of dismissal of the SCAC; (ix) participated with defense counsel in dozens of meet and confer sessions with respect to document, deposition, and other aspects of merits discovery; (x) prepared letter-briefs and argued to Magistrate Judges Katz and Maas multiple discovery disputes; (xi) retained and consulted with experts on investment fund administration; (xii) successfully negotiated the settlement with GlobeOp and its insurance carriers and (xiii) otherwise vigorously represented the interests of putative class members in this extraordinarily complex dispute.

79. In conjunction with the FG Settlement, Lead Counsel submitted a fee application reflecting a combined lodestar of all Plaintiffs' Counsel of \$31.2 million through July 31, 2012. *See* the Declaration of Lead Counsel in Support of Motion for Final Approval of the Proposed Partial Settlement and Plan of Allocation, Attorneys' Fees and Reimbursement of Expenses [Dkt No. 1038].

80. By order entered March 27, 2013, this Court awarded Plaintiffs' Counsel fees of \$12.56 million and reimbursement of \$1,279,242 in expenses incurred through July 31, 2012. Although those fees and expenses have not yet been disbursed because of the pendency of the appeals from the Final Judgment approving the FG Settlement, assuming that those fees will be paid in the future, the unreimbursed lodestar of Plaintiffs' Counsel would still exceed \$18.6 million with respect only to fees incurred prior to July 31, 2012. The \$1.25 million fee request

is thus a small percentage (approximately 6.7%) of Counsel's combined unreimbursed lodestar through July 31, 2012, and a still smaller percentage of their lodestar through June 14, 2013, when the Settling Parties signed an agreement in principle.¹⁰

81. The fee application for 25% of the \$5,000,000 GlobeOp Settlement Fund is well within the range of fees awarded in these types of actions and is entirely justified in light of the substantial benefits conferred on the Class, the exceptional risks undertaken, the quality of representation, and the nature and extent of legal services performed.

82. Lead Counsel also are requesting reimbursement of \$19,825.42 in unreimbursed expenses directly relating to the prosecution of the claims against GlobeOp. These expenses consist primarily of deposition expenses, including transcripts, video recordings, and travel expenses incurred subsequent to July 31, 2012 and attributable only to the claims against GlobeOp. The expenses for which reimbursement is requested are detailed in Exhibit B.

83. Plaintiffs' Counsel made every reasonable attempt to allocate the work among them, working closely to avoid duplication of effort and to ensure efficient prosecution. They also worked to limit expenses.

84. A portion of the travel expenses (\$2,250) was to defray Hans Hufschmid's costs to travel to New York for his deposition. Hufschmid was GlobeOp's former CEO and if not for that agreement, Plaintiffs' counsel would have had to travel to London for his deposition at comparable expense and are far greater expenditure of time and inconvenience.

85. Such sums as may be approved by the Court will be paid from the

¹⁰ Based on review of the respective firms' financial records, Lead Counsel have incurred additional lodestar from July 31, 2012 through June 14, 2013, in excess of \$10 million. Accordingly, Plaintiffs' total unreimbursed lodestar through June 14, 2013 exceeds \$28.6 million, and the instant fee request of \$1.25 million is 4.4% of that amount.

GlobeOp Settlement Fund.

86. Plaintiffs' Counsel may seek additional attorneys' fees at a later date based on any other recoveries. GlobeOp Settlement Class Members are not personally liable for any such fees or expenses.

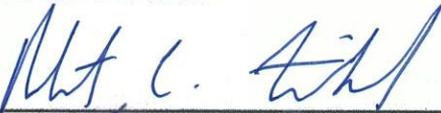
VII. CONCLUSION

87. Lead Counsel submit that this is an excellent settlement taking into consideration all of the circumstances and we respectfully request the Court to approve the GlobeOp Settlement as fair, reasonable, and adequate to the GlobeOp Settlement Class.

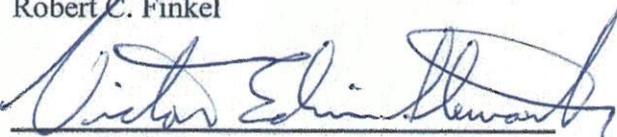
Dated: October 11, 2013



David A. Barrett



Robert C. Finkel



Victor E. Stewart