

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

PASHA ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

Master File No. 09-cv-118 (VM) (FM)

This Document Relates To: 09-cv-118 (VM)

**PLAINTIFFS’ REPLY MEMORANDUM IN FURTHER SUPPORT OF
MOTION FOR FINAL APPROVAL OF THE PROPOSED GLOBEOP
SETTLEMENT AND AN AWARD OF FEES AND EXPENSES**

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Before the Court is the Representative Plaintiffs' motion for final approval of the proposed settlement between the Representative Plaintiffs and Defendant GlobeOp for \$5 million of immediate cash consideration.¹ The Representative Plaintiffs, in their Opening Final Approval Memorandum (Dkt. No. 1204) ("Opening Mem."), demonstrated that the proposed settlement is fair, reasonable and adequate, among other reasons, because the Representative Plaintiffs faced significant legal and factual issues in pursuing their claims against GlobeOp. The recovery achieved in the Settlement is an excellent result in light of the substantial risks and certain multi-year delay of further litigation. Further, Plaintiffs demonstrated in the Opening Mem. that the requested 25% fee award and reimbursement of \$19,825.42 in expenses is appropriate under the applicable legal standards. A proposed GlobeOp Final Judgment and Order of Dismissal with Prejudice is submitted herewith as Exhibit A, and a proposed Final Judgment and Order Awarding Fees and Expenses is submitted herewith as Exhibit B.

On September 10, 2013, this Court entered the GlobeOp Preliminary Approval Order, Dkt. No. 1189 ("Preliminary Approval Order"). As part of the notice program implemented pursuant to the Preliminary Approval Order, fifty-four printed notices and proof of claim forms were mailed to potential Class Members, in addition to dissemination of the Summary Notice over *PR Newswire*. See Affidavit of Daniel J. Polizzi, dated October 11, 2013 (Dkt. No. 1205-1). The printed notices apprised GlobeOp Settlement Class Members of their right to object to the proposed settlement or to the fee and expense request, or to request exclusion from the

¹ The \$5 million cash settlement consideration was paid by the Insurance Carriers on behalf of GlobeOp into escrow on September 23, 2013. In total, GlobeOp's Insurance Carriers agreed, on behalf of GlobeOp, to pay \$10,000,000 in aggregate consideration for a release of all claims asserted both in this Action and by the Litigation Trustee in the State Court Action brought on behalf of the Domestic Funds. GlobeOp Settlement Class Members who have perfected claims in Bankruptcy Court will directly benefit from the \$5,000,000 State Court settlement that will enhance their recovery in the Bankruptcy Proceedings.

Settlement Class by October 25, 2013.

In response to that notice, no objections or requests for exclusion have been received from Class Members to the GlobeOp Settlement, or to the fee or expense request. This is a significant affirmation of the fairness of the Settlement. *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (McMahon, J.). In this Circuit, “[i]t is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.” *In re Bear Stearns Comp., Inc. Sec. Litig.*, 2012 U.S. Dist. LEXIS 161269, *at 16 (S.D.N.Y. Nov. 9, 2012) (Sweet, J.) (quoting *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp.2d 418, 425 (S.D.N.Y. 2001)).

The only objection to the GlobeOp Settlement was filed by the PwC Defendants, joined by the Citco Defendants (Dkt. Nos. 1208 and 1209), and was directed solely to Paragraph 15 of the Preliminary Approval Order² pertaining to this Court’s jurisdiction over Settlement Class Members. That same language from Paragraph 15 of the Preliminary Approval Order was proposed to be included as Paragraph 27 of the proposed Final Judgment and Order annexed as Exhibit B to the GlobeOp Stipulation of Settlement dated as of August 27, 2013 (Dkt. No. 1184-5). The Settling Parties initially included this language in the Preliminary Approval Order and proposed Final Judgment to maintain consistency with language in the Final Judgment in the settlement with the Fairfield Greenwich Defendants. *See* Final Judgment and Order of Dismissal

² Paragraph 15 of the Preliminary Approval Order states as follows:

Any GlobeOp Settlement Class Member who submits a Request for Exclusion shall not be deemed to have submitted to the jurisdiction of any Court in the United States for any matter on account of such submission, and any GlobeOp Settlement Class Member who submits a Proof of Claim thereby submits to the jurisdiction of this Court with respect only to the subject matter of such Proof of Claim and all determinations made by this Court thereon and shall not be deemed to have submitted to the jurisdiction of this Court or of any court in the United States for any other matter on account of such submission.

with Prejudice (Dkt. No. 1097) at ¶ 28.³ Plaintiffs consider that such language is not necessary with respect to the GlobeOp Settlement because this Settlement involves only investors in the Domestic Funds, virtually all of whom are U.S. persons and have already filed Proofs of Interest in the Bankruptcy Court. Accordingly, Plaintiffs respectfully request that Paragraph 27 of the proposed Final Judgment and Order be changed so that it states only that “[t]he Preliminary Approval Order is hereby amended to omit Paragraph 15 therein.” *See* Ex. A, Paragraph 27. As such, the PwC and Citco Defendants’ objection to the GlobeOp Settlement has been mooted by the Settling Parties’ agreement to omit the disputed language from the Preliminary Approval Order and the proposed Final Approval Order submitted herewith. The PwC and Citco Defendants have represented to counsel for Plaintiffs, based on the revised proposed Final Approval Order, that they will be withdrawing their objection.

Finally, under the Class Action Fairness Act of 2005, “[a]n order granting final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with [notice of the settlement].” Notice was given by GlobeOp’s counsel to the appropriate State and Federal officials on September 24, 2013. *See* Declaration of David H. McGill (Dkt. No. 1207). Accordingly, Paragraph 29 of the proposed Final Judgment has been amended to provide that “pursuant to 28 U.S.C. § 1715(d), this Final Judgment shall not become effective until December 26, 2013.”

³ The PwC and Citco Defendants made a similar objection to the FG Settlement, Plaintiffs responded, and this Court overruled the objection (at Dkt No. 1142) and entered the Final Judgment and Order including the provision at issue. The PwC and Citco Defendants appealed (Dkt. No. 1121) and the matter now is pending before the Second Circuit.

CONCLUSION

For the reasons set forth herein and in Plaintiffs' Opening Memorandum, the proposed Settlement and fee and expense applications should be finally approved.

November 8, 2013

Respectfully submitted,

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