

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

PASHA S. ANWAR, et al.,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, et al.,

Defendants.

Master File No. 09-cv-00118 (VM)

This Document Relates To: 09-cv-00118 (VM)

**PLAINTIFFS' MEMORANDUM IN RESPONSE TO PARTIAL OPPOSITION
OF SYLVIA TUCKER TO DISTRIBUTION OF GLOBEOP SETTLEMENT FUND**

Plaintiffs submit the following information with respect to the partial opposition to Plaintiffs' motion for entry of the proposed GlobeOp Distribution Order (Dkt. No. 1293-1) filed by Sylvia Tucker, defendant Jeffrey Tucker's mother (Dkt. No. 1311-13). Ms. Tucker contends that the term "immediate family member" in the Fairfield Greenwich Stipulation of Settlement (Dkt. No. 996, para. 1(ss)) has a narrow meaning and was intended by defendants only to exclude "spouses and children" from the Fairfield Greenwich Settlement Class. *See* Declaration of Mark Cunha dated August 29, 2014 (Dkt. No. 1312) ("In my thinking about whose claims would be excluded by the term 'immediate family member,' I had in mind spouses and children.").¹

¹ Plaintiffs agree that the term "immediate family member" in the earlier Fairfield Greenwich Stipulation of Settlement (Dkt. No. 996) has the same meaning as the term in the later GlobeOp Stipulation of Settlement (Dkt. No. 1184, para. 1(s)). The Second Circuit recently affirmed this Court's denial of the BLMIS Trustee's attempt to block the Fairfield Greenwich settlement. Accordingly, Plaintiffs will file a proposed distribution order for the Fairfield Greenwich settlement fund when the Court of Appeals decision becomes final; Plaintiffs intend to exclude Ms. Tucker for the same reasons discussed in text, subject to the Court's decision on the pending motion.

“Immediate family member” is a defined term under the federal securities laws (*see* 17 C.F.R. §229.404(a), Instructions; 17 C.F.R. 240.16a-1(e)), and includes “any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.” As a defined term under the federal securities laws, “immediate family member” is customarily used in securities settlements to establish exclusions from settlement classes without the need for further definition of that term. *See, e.g., Rubin v. MF Global*, Case No. 08 Civ. 2233 (VM) (para. 1c) (excluding defendants’ “immediate families” from the Class).

Defendants negotiated in the Fairfield Greenwich Stipulation of Settlement (Dkt. No. 996) for a broad release that largely mirrors the definition under the federal securities laws. *See* para. 1(mm) (“Released Parties’ means . . . (ii) each of the FG Individual Defendants and their respective present, past and future spouses, parents, siblings, children, grandparents, and grandchildren, the present, past and future spouses of their respective parents, siblings and children, and the present, past and future parents and siblings of their respective spouses, including step and adoptive relationships.”). The release of claims against “parents” of Individual Defendants differentiates such persons from ordinary class members who are not receiving releases.

Ms. Tucker also suggests that Plaintiffs should be somehow estopped from denying her class membership because she was originally mailed a Fairfield Greenwich class notice and a deficiency letter on her Fairfield Greenwich claim. *See* Tucker Declaration (Dkt. No. 1313), paras. 6-8. At the time of the mailings of the Fairfield Greenwich notice and deficiency letter, Plaintiffs’ counsel were acting with respect to approximately 3000 potential class members and had not identified Sylvia Tucker as Jeffrey Tucker’s mother. Ms. Tucker was identified as an

excluded member of the settlement classes in 2013 when Plaintiffs' counsel were preparing the mailing of the GlobeOp settlement notice to fewer than 100 potential class members.

Dated: September 5, 2014

Respectfully submitted,

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