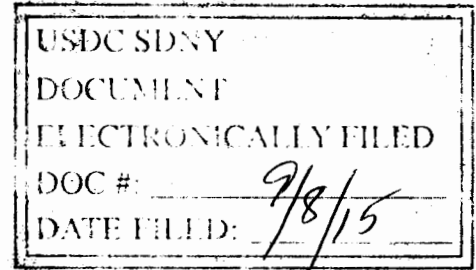


BOIES SCHILLER & FLEXNER LLP

575 LEXINGTON AVENUE • 7TH FLOOR • NEW YORK NY 10022 • PH. 212 446 2300 • FAX 212 446 2350

September 3, 2015



BY FAX

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

Re: Anwar, et al. v. Fairfield Greenwich Limited, et al.
Master File No. 09-CV-00118 (VM) (FM)

Dear Judge Marrero:

We write on behalf of the *Anwar* Plaintiffs to respond to the August 21, 2015 letter (“Letter”) from Robert A. Wallner, counsel for the Successor Trustee (“Trustee”) of the Greenwich Sentry and Greenwich Sentry Partners Litigation Trusts. The Letter requests a pre-motion conference regarding the Trustee’s proposed motion to intervene for the limited purpose of objecting to Plaintiffs’ settlement with the Citco Defendants. *See* Dkt. No. 1398. Plaintiffs respectfully submit that the Trustee’s objections are unfounded; and that he lacks standing to object to the settlement and cannot meet Rule 24’s requirements for intervention.

The Trustee’s litigation in New York state court against Citco was dismissed two years ago in a comprehensive decision. *See Walker, Truesdell, Roth & Associates, Inc. v. Globeop Fin. Servs. LLC*, 993 N.Y.S.2d 647 (N.Y. Sup. Ct. 2013). Although the Trustee filed a notice of appeal on June 27, 2014, he did not perfect the appeal until over a year later, on August 10, 2015, and most recently agreed to adjourn the appeal until December 2015. *See* Exhibits A and B.

The Trustee’s intervention request and his substantive objections must be addressed in light of these facts. The Trustee is seeking to inject himself into the Citco settlement even though the only way in which the settlement could even hypothetically affect his claims is in the event that he prevails on appeal and then takes the case to trial at which he wins damages. Such wholly conjectural circumstances provide no basis to interfere with a \$125 million settlement.

The Trustee’s Objections Are Meritless. Recognizing the existence of the Trustee’s claims, the settlement agreement expressly states that it does not operate to release “any claims asserted or which may be asserted by the Funds, or the pending (though dismissed) derivative litigation brought in connection with the Funds.” Dkt. No. 1398 ¶ 16. The relevant sentence provides:

This release does not include any claims asserted or which may be asserted by the Funds, or the pending (though dismissed) derivative litigation brought in

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connection with the Funds; provided, however, that to the extent that any such claims have been or may be asserted, nothing in this paragraph or any provision herein shall prevent the Released Parties from asserting any defenses or raising any argument as to liability or damages with respect to such claims or, with the exception of the provisions of paragraph 4, prevent the Released Parties from asserting any rights, remedies or claims against the Funds or in the pending (though dismissed) derivative litigation. *Id.*

The Trustee ignores this language, which is repeated in ¶ 16 of the proposed Final Judgment (Dkt. No. 1398-5). Instead, the Trustee claims that one sentence in ¶ 19 of the proposed Final Judgment, which contains standard language for a bar order, “may imply that this Court has determined that Citco has colorable rights to offset the Trustee’s claims.” Letter at 1-2. The sentence reads: “Nothing in this paragraph precludes the Citco Defendants from arguing that the settlement proceeds in this case are an offset against claims that may be made against them in other proceedings.” Dkt. No. 1398-5 ¶ 19. This sentence preserves Citco’s ability to argue for an offset in other proceedings, but it in no way indicates that this Court has made any determination as to the merits of any offset. On the contrary, the merits of any such arguments (including how an offset might be calculated) will be ruled upon, if necessary, by the courts in whatever proceedings may occur. Plaintiffs’ counsel has conveyed to the Trustee that they will make this representation on the record at the final fairness hearing. This will address any conceivable issue.¹

Lack of Standing. As this Court found in denying a motion to intervene brought by the BLMIS trustee, who sought to object to the settlement with the Fairfield Greenwich defendants, “nonparties, such as the Trustee, generally do not have standing to object to a class action settlement.” Dkt. No. 1071, *aff’d*, No. 13-1392 (2d Cir. Sept. 3, 2014); *see Cent. States Health*

¹ Because the Trustee’s objections are groundless and any offset issues are purely hypothetical, there is no reason for the class notice to discuss the legal basis or computation of an offset, as the Trustee asserts. *See* Letter at 2.

The Trustee also points to Citco’s *argument* that the investors were injured “(if at all) only derivatively” in opposing class certification. Letter at 2. However, Citco’s argument related only to Plaintiffs’ holder claims. *See, e.g.,* Citco Defendants’ Memorandum of Law In Opposition to Plaintiffs’ Motion for Class Certification (September 15, 2014) at 18 (“Here, plaintiffs’ common-law holder claims are derivative in nature.”). Moreover, the Court granted class certification over Citco’s objections and has ruled that Plaintiffs have standing to assert direct claims. *See Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 401 (S.D.N.Y. 2010) (“[T]o the extent that Plaintiffs properly allege duties owed by each defendant directly to them . . . , they have standing to pursue such claims.”); *Anwar v. Fairfield Greenwich Ltd.*, 884 F. Supp. 2d 92, 98 (S.D.N.Y. 2012) (rejecting defendants’ arguments that plaintiffs lacked standing to bring holder claims).

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& *Welfare Fund v. Merck-Medco Managed Care*, 504 F.3d 229, 244 (2d Cir. 2007) (Rule 23(e)(5) provides that “any class member may object to the propos[ed]” settlement, but “[n]onparties . . . generally do not have standing to object to a settlement of a class action.”). Among other reasons, because the only issue before the Court is whether the proposed settlement is “fair, reasonable, and adequate,” Rule 23(e)(2), courts “usually reject . . . outsiders’ attempts to enter the litigation during the settlement phase.” *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989). Because the Trustee is not a class member and cannot show “‘formal’ legal prejudice,” he lacks standing to object to the Citco settlement. See *Bhatia v. Piedrahita*, 756 F.3d 211, 219 (2d Cir. 2014) (Citco and PwC lack standing to object to settlement with Fairfield Defendants in this case); *In re American International Group, Inc. Securities Litigation*, 2013 WL 68928 at *3 (S.D.N.Y. Jan. 7, 2013) (New York Attorney General lacks standing to object to proposed class settlement).

The Trustee Cannot Meet Rule 24’s Requirements for Intervention. Intervention under Rule 24(a) is allowed only where:

(1) the motion is timely; (2) the applicant asserts an interest relating to the property or transaction that is the subject of the action; (3) the applicant is so situated that without intervention, disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; and (4) the applicant’s interest is not adequately represented by the other parties.

MasterCard Int’l Inc. v. Visa Int’l Serv. Ass’n, Inc., 471 F.3d 377, 389 (2d Cir. 2006). “Failure to satisfy any one of these requirements is a sufficient ground to deny the application.” *Farmland Dairies v. Comm’r of N.Y. State Dep’t of Agric. & Mkts.*, 847 F.2d 1038 (2d Cir. 1998 (emphasis in original)). Here, the Trustee cannot demonstrate that he has “an interest” in this action or that “without intervention” the Trustee’s “ability to protect its interest” will be impaired or impeded. As discussed, the Citco settlement and the proposed Final Judgment do not address the viability of an offset either way and the Trustee will be able to oppose any such offset when and if the issue is actually raised by Citco in another proceeding. Further, permissive intervention under Rule 24(b) is permitted only if the application would not “unduly delay or prejudice the adjudication of the rights’ of the existing parties.” Fed. R. Civ. P. 24(b)(3); *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 201 (2d Cir. 2000). Aside from the Trustee’s lack of a legally cognizable interest, his intervention would delay final approval and prejudice class members by needlessly postponing settlement distributions.

For the reasons set forth above, the Trustee’s request to file a motion to intervene should be denied.

Respectfully yours,



David A. Barrett

cc: Robert A. Wallner (via email)

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The Honorable Victor Marrero
September 3, 2015
Page 4

Sarah L. Cave (via email)
Timothy A. Duffy (via email)
Andrew Gordon (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
Anwar Plaintiffs
SO ORDERED.
9-8-15 [Signature]
DATE VICTOR MARRERO, U.S.D.J.

Exhibit A

FILED: NEW YORK COUNTY CLERK 06/27/2014

NYSCEF DOC. NO. 262

INDEX NO. 600469/2009

RECEIVED NYSCEF: 06/27/2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKWALKER, TRUESDELL, ROTH & ASSOCIATES,
INC., Trustee of Greenwich Sentry, L.P. Litigation
Trust,

Plaintiff,

vs.

GLOBEOP FINANCIAL SERVICES LLC, CITCO
FUND SERVICES (EUROPE) BV, CITCO
(CANADA) INC., PRICEWATERHOUSECOOPERS
LLP, and PRICEWATERHOUSECOOPERS
ACCOUNTANTS N.V.,

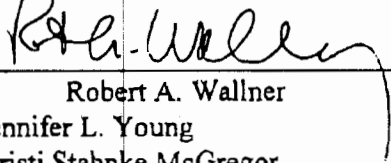
Defendants.

New York County
Index No. 600469/2009NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff hereby appeals to the Appellate Division, First Judicial Department, from each and every part of the Decision and Order of the Honorable Marcy S. Friedman, J.S.C., dated and entered in the Clerk's Office of the Supreme Court of the State of New York, County of New York, on May 27, 2014, which granted Defendants' motions to dismiss Plaintiff's complaint.

Dated: New York, New York
June 27, 2014

MILBERG LLP

Robert A. Wallner
Jennifer L. Young
Kristi Stahnke McGregor
Charles Slidders
One Pennsylvania Plaza
New York, NY 10119
Tel: (212) 594-5300
rwallner@milberg.com
jyoung@milberg.com
kmcgregor@milberg.com
cslidders@milberg.com

SEGER WEISS LLP

Stephcn A. Weiss
Parvin Aminolroaya
77 Water Street
New York, NY 10005
Tel: (212) 584-0700
swciss@segerweiss.com
paminolroaya@seegerweiss.com

*Attorneys for Plaintiff Walker, Truesdell, Roth &
Associates, Inc., Trustee of Greenwich Sentry, L.P.
Litigation Trust*

686633v1

Exhibit B

2015 0041

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT

NEW GREENWICH LITIGATION
TRUSTEE, LLC, as Successor Trustee of
Greenwich Sentry, L.P. Litigation Trust.

Plaintiff-Appellant,

- v -

CITCO FUND SERVICES (EUROPE) B.V.,
CITCO (CANADA) INC.,
PRICEWATERHOUSECOOPERS LLP and
PRICEWATERHOUSECOOPERS
ACCOUNTANTS, N.V.,

Defendants-Respondents,

and

GLOBEOP FINANCIAL SERVICES LLC,

Defendant.

NEW GREENWICH LITIGATION
TRUSTEE, LLC, as Successor Trustee of
Greenwich Sentry Partners, L.P. Litigation
Trust,

Plaintiff-Appellant,

- v -

CITCO FUND SERVICES (EUROPE) B.V.,
CITCO (CANADA) INC.,
PRICEWATERHOUSECOOPERS LLP,

Defendants-Respondents,

and

GLOBEOP FINANCIAL SERVICES LLC,

Defendant.

New York County Clerk's Index
Nos. 600469/09 and 600498/09

STIPULATION OF
ADJOURNMENT TO
DECEMBER 2015 TERM

FILED
APR 17 2015
SUP COURT, 1ST DEPT.
FIRST DEPT.

WHEREAS, Plaintiff-Appellant New Greenwich Litigation Trustee, LLC, has taken two related appeals in the above referenced matters;


WHEREAS, Plaintiff-Appellant New Greenwich Litigation Trustee, LLC filed a Note of Issuc and a Notice of Time Requested for Argument or Intention to Submit on August 10, 2015, noticing these appeals for the October 2015 Term and requesting argument;

WHEREAS, the parties have agreed to adjourn the appeals to the December 2015 Term;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel, that, pursuant to 22 NYCRR § 600.11(g), the appeals are hereby adjourned to the December 2015 Term; the deadline for filing Defendants-Respondents' answering briefs is October 7, 2015; and the deadline for filing Plaintiff-Appellant's reply briefs is November 13, 2015.

Dated: New York, New York
August 17, 2015

MILBERG LLP



Robert A. Wallner
One Pennsylvania Plaza
New York, New York 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229
E-mail: rwallner@milberg.com

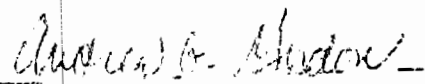
- and

SEGER WEISS LLP

Stephen A. Weiss
77 Water Street
New York, New York 10005
Telephone: (212) 584-0700
Facsimile: (212) 584-0799
E-mail: sweiss@segerweiss.com

*Attorneys for Plaintiff-Appellant New
Greenwich Litigation Trustee, LLC, as
Successor Trustee of the Greenwich
Sentry, J.P. Litigation Trust and
Greenwich Sentry Partners, L.P.
Litigation Trust*

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP



Brad S. Karp
Leslie Gordon Fagen
Allan J. Arffa
Andrew G. Gordon
Gregory F. Laufer
Patrick J. Somers
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
E-mail: bkarp@paulweiss.com
lfagen@paulweiss.com
aarffa@paulweiss.com
agordon@paulweiss.com
glaufer@paulweiss.com
psomers@paulweiss.com

*Attorneys for Defendants-Respondents Citco
Fund Services (Europe) B.V., and Citco
(Canada) Inc.*

KIRKLAND & ELLIS LLP

Timothy A. Duffy
Emily Nicklin
Timothy A. Duffy
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Fax: (312) 862-2200
E-mail: tim.duffy@kirkland.com

*Attorneys for Defendant-Respondent
PricewaterhouseCoopers LLP*

HUGHES HUBBARD & REED LLP

Sarah L. Cave
William R. Maguire
Sarah L. Cave
One Battery Park Plaza
New York, New York 1004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
E-mail: sarah.cave@hugheshubbard.com

*Attorneys for Defendant-Respondent
PricewaterhouseCoopers Accountants N.V.*