



UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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 PASHA ANWAR, et al., : 09-cv-0118 (VM)
 : Plaintiffs, :
 : ORDER
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 - against - :
 :
 FAIRFIELD GREENWICH LIMITED, :
 et al., :
 : Defendants. :
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VICTOR MARRERO, United States District Judge.

PricewaterhouseCoopers LLP and PricewaterhouseCoopers Accountants N.V. (collectively, "PwC Defendants") filed the instant motion for summary judgment ("Motion") on the Anwar Plaintiffs'¹ remaining claim of negligence. (Dkt. No. 1414.) PwC Defendants seek summary judgment on seven grounds: (1) Anwar Plaintiffs lack standing because the action is derivative under Delaware's Tooley test, see Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031 (Del. 2004); (2) the Securities Litigation Uniform Standards Act ("SLUSA") precludes the negligence claim; (3) the statute of limitations bars claims against PricewaterhouseCoopers Accountants N.V.; (4) Anwar Plaintiffs did not rely upon the PwC Defendants' audit opinions; (5) Anwar Plaintiffs cannot

¹ The term "Anwar Plaintiffs" describes a certified class of plaintiffs comprising all shareholders and limited partners in Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P., and Greenwich Sentry Partners L.P. See Anwar v. Fairfield Greenwich Ltd., 306 F.R.D. 134, 136 (S.D.N.Y. 2015) ("Anwar VI").

prove that PwC Defendants' audits were deficient because PwC Defendants did not have a duty to uncover the fraud conducted by Bernard L. Madoff ("Madoff"); (6) Anwar Plaintiffs' damages are limited to losses based on subsequent purchases; and (7) PwC Defendants and Anwar Plaintiffs did not have a special relationship approaching contractual privity under the three-pronged Credit Alliance test, see Credit Alliance Corp. v. Arthur Andersen & Co., 483 N.E.2d 110 (N.Y. 1985). (Dkt. No. 1414.)

Regarding the last argument, PwC Defendants contend that Anwar Plaintiffs fail to meet all three prongs of the Credit Alliance test: "(1) an awareness by the maker of the statement that it is to be used for a particular purpose ['Particular Purpose Requirement']; (2) reliance by a known party on the statement in furtherance of that purpose ['Known Party Requirement']; and (3) some conduct by the maker of the statement linking it to the relying party and evincing its understanding of that reliance ['Linking Conduct Requirement']." Anwar v. Fairfield Greenwich Ltd., 728 F. Supp. 2d 372, 432 (S.D.N.Y. 2010) ("Anwar II").

Upon review of the Motion, the Court finds that six of the issues the Motion raises have been adequately addressed in the Court's prior rulings in this litigation and present no genuine issue of material fact. First, the Court has found

that Anwar Plaintiffs have standing under both New York and Delaware law. See Anwar II, 728 F. Supp. 2d at 401 n.9; see also Anwar v. Fairfield Greenwich Ltd., 884 F. Supp. 2d 92, 99 (S.D.N.Y. 2012) ("Anwar IV"). Second, the Court held that SLUSA does not preclude the negligence claim. See Anwar v. Fairfield Greenwich Ltd., No. 09 CIV. 118, 2015 WL 4610406, at *8-*9 (S.D.N.Y. July 29, 2015). Third, the statute of limitations does not bar claims against PricewaterhouseCoopers Accountants N.V. See Anwar II, 728 F. Supp. 2d at 461. Fourth, because the Anwar Plaintiffs' negligent misrepresentation claim was dismissed, Anwar Plaintiffs no longer have to demonstrate reliance. See Anwar, 2015 WL 4610406, at *8-*10. Fifth, Anwar Plaintiffs do not have to demonstrate that PwC Defendants had a duty to uncover the fraud perpetrated by Madoff in order to prove that the PwC Defendants' audits were deficient. Rather, Anwar Plaintiffs must show that the PwC Defendants breached their alleged duty to conduct the audits in accordance with generally accepted auditing standards and other applicable auditing standards. See Anwar, 2015 WL 4610406, at *8-*9. Sixth, as to the PwC Defendants' argument that they did not have a special relationship with Anwar Plaintiffs approaching contractual privity under the three-pronged Credit Alliance test, the Court has previously found that with respect to the

Particular Purpose Requirement, PwC Defendants were aware that the audit opinions were to be used for a particular purpose. See Anwar II, 728 F. Supp. 2d at 455. Therefore, the Motion is denied as to these six grounds.

The Court finds that the remaining issues present factual disputes that warrant further briefing from the parties: (1) whether the Anwar Plaintiffs were a known party under the Known Party Requirement of the Credit Alliance test; (2) whether there was sufficient linking conduct between PwC Defendants and Anwar Plaintiffs under the Linking Conduct Requirement of the Credit Alliance test; and (3) whether Anwar Plaintiffs' damages are limited to losses based on subsequent purchases. Anwar Plaintiffs are directed to submit a response to these three issues.

ORDER

Accordingly, it is hereby

ORDERED that the motion of PricewaterhouseCoopers LLP and PricewaterhouseCoopers Accountants N.V. (collectively, "PwC Defendants") for summary judgment on the remaining claim of negligence (Dkt. No. 1414) is **DENIED** as to the grounds described above; and it is further

ORDERED that Anwar Plaintiffs are directed to respond to the three remaining issues outlined above in accordance with

the schedule and page limits set by the Court during its telephone conference with the parties on October 21, 2015.

SO ORDERED.

Dated: New York, New York
23 October 2015

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a thin horizontal line.

Victor Marrero
U.S.D.J.