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DETROIT

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November 5, 2015

**VIA FAX**

The Honorable Victor Marrero  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Anwar v. Fairfield Greenwich Ltd.*, 09-118 (VM)

Dear Judge Marrero:

We represent non-party New Greenwich Litigation Trustee, L.L.C, as Successor Trustee ("Trustee") of the Greenwich Sentry and Greenwich Sentry Partners Litigation Trusts.<sup>1</sup> We write pursuant to Your Honor's local rules to request a pre-motion conference to address the Trustee's contemplated motion to intervene for the limited purpose of obtaining documents filed under seal by the plaintiffs and the PwC defendants in connection with their motions *in limine* (Dkt. Nos. 1437, 1438; *see* Dkt. No. 1440).<sup>2</sup>

The sealing of the documents is unwarranted, given the strong presumption of public access to judicial documents. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006); *Doe v. Ashcroft*, 317 F. Supp. 2d 488, 492 (S.D.N.Y. 2004) (Marrero, J.) (in case implicating national security concerns, noting Government's burden to show "the specific and compelling reasons" for "each particular redaction," citing "exacting First Amendment standards"); *United States v. Martoma*, 2013 U.S. Dist. LEXIS 182959, at \*10 (S.D.N.Y. Dec. 28, 2013 (denying motion to seal *in limine* papers filed in criminal case, explaining: "a qualified First Amendment right of access extends 'to a pretrial hearing on a ... motion to preclude the use of certain evidence at trial,' as well as to '[w]ritten documents filed in connection with pretrial motions.'") (ellipsis and brackets in original) (quoting *In re New York Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987)), *appeal dismissed*, 2014 U.S. App. LEXIS 601 (2d Cir. Jan. 8, 2014).

<sup>1</sup> Lawsuits on behalf of the trusts are pending in New York state court against PricewaterhouseCoopers LLP and PricewaterhouseCoopers Accountants, N.V. (collectively, "PwC"), Citco Fund Services (Europe) BV, and Citco (Canada) Inc. Appeals from the supreme court's grant of motions to dismiss the complaints are being briefed in the First Department.

<sup>2</sup> PwC's motion -- styled an "omnibus" motion -- does not even disclose *what* relief is requested.

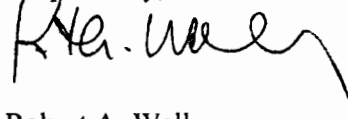
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The presumption is especially compelling here, given that, *inter alia*, the Court has denied PwC's summary judgment motion on the issue of negligence (Dkt. No. 1430), and defendants themselves have emphasized "the broad public interest in the Madoff matter." Defendants' Letter to Hon. Frank Maas, dated August 19, 2013, at Exhibit A, p. 6 (Dkt. No. 1378, at p. 40 of 53).

Even if the papers contain information designated as "Confidential" under the Second Amended Stipulation and Order Governing Confidentiality of Discovery Material ("Order") (Dkt. No. 591), that fact would not satisfy the parties' burden of overcoming the presumption. *See Lugosch*, 435 F.3d at 125-26. Indeed, the Order (at ¶ 9) contemplates challenges to confidentiality designations and provides that, in the event of a challenge, the party seeking confidential treatment bears "the burden of demonstrating that the designated material should be protected under ... the applicable law." Because the events at issue occurred so many years ago, it would be especially difficult for the parties to meet that burden. *See In re "Agent Orange" Prod. Liability Litig.*, 104 F.R.D. 559, 575 (E.D.N.Y. 1985), *aff'd*, 821 F.2d 139 (2d Cir. 1987).

We respectfully request that the Court schedule a pre-motion conference so that we may further address this matter.


Respectfully,



Robert A. Wallner

cc (via email):

David A. Barrett, Esq.  
Sarah L. Cave, Esq.  
Timothy A. Duffy, Esq.  
Robert C. Finkel, Esq.  
Andrew G. Gordon, Esq.  
Victor E. Stewart, Esq.

<p><i>The parties are</i> directed to respond by <i>11-10-15</i> by letter not to exceed <i>three</i> (<i>3</i>) pages, to the matter set forth above by <i>Successor Trustee</i>, showing cause why the relief requested should not be granted.</p> <p><b>SO ORDERED.</b></p> <p><i>11-6-15</i> DATE  VICTOR MARRERO, U.S.D.J.</p>
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