

**KATZ BARRON
SQUITERO FAUST**

MIAMI
2699 S. BAYSHORE DRIVE
SEVENTH FLOOR
MIAMI, FL 33133-5408

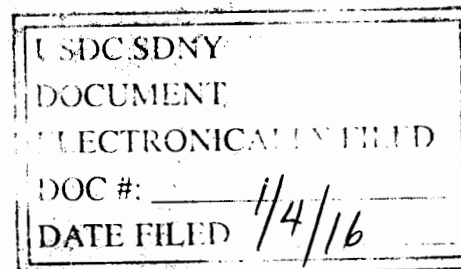
305-856-2444
305-285-9227 FAX

www.katzbarron.com

December 30, 2015

Via Fax (212) 805-6382

Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312



**Re: *Anwar, et al. v. Fairfield Greenwich Limited, et al.*,
Case No. 09-cv-118 (VM)(THK), Standard Chartered Cases**

This correspondence relates to: *Barbachano v. Standard Chartered Bank International (Americas) Limited, et al.*, 1:11-cv-03553-VM

Dear Judge Marrero:

We write on behalf of Plaintiff Teresa Barbachano, one of the plaintiffs in the Standard Chartered Cases ("SC Cases"), and are in receipt of Standard Chartered's correspondence to the Court, dated December 29, 2015.

Standard Chartered argues that we have acted "improperly," SC correspondence at 1, because Ms. Barbachano's Third Amended Complaint [D.E. 1525] appends the "uniform negligence count" to her existing Amended Complaint [D.E. 990], while otherwise leaving that complaint unchanged. We disagree.

Pursuant to this Court's order, the operative pleading on behalf of Ms. Barbachano was her Amended Complaint. See October 24, 2012 Decision and Order [D.E. 995], at 6 ("[o]rder[ing] that the proposed Amended Complaint (Docket No. 990) shall serve as the operative pleading in this matter;" and then dismissing Counts I, III, and V of the Amended Complaint in accordance with the Court's September 12, 2012 Decision and Order, [D.E. 937]). See also August 22, 2014 Order [D.E. 1309], at 2 (denying "Barbachano's request for leave to file a second amended complaint, separate from repleading a uniform negligence count in coordination with all other plaintiffs . . ."). Thus, while the Court, pursuant to its October 24, 2012 Decision and Order, dismissed certain of Ms. Barbachano's counts in her Amended Complaint (and later, in its August 22, 2014 Order, agreed with Standard Chartered that it had also dismissed Ms. Barbachano's overall portfolio suitability claims), no portion of Ms. Barbachano's Amended Complaint was stricken.

Honorable Victor Marrero
December 30, 2015
Page 2

Then, on December 3, 2015, the Court ordered that “[a]ny Standard Chartered Plaintiff who seeks to amend the complaint herein solely for the purposes of pleading the uniform negligence claim referred to above and attached to this letter is directed to do so by 12-22-15.” [D.E. 1473] That is exactly what Ms. Barbachano has done, and to do otherwise (e.g., excise portions of her Amended Complaint) would not have been compliant with the Court’s direction.

Moreover, in our December 22, 2015 correspondence to the Court, which notified the Court that Ms. Barbachano was filing a Third Amended Complaint, we expressly stated that:

Ms. Barbachano hereby advises that she elects to amend her amended complaint, [D.E. 990], to include the “uniform negligence count” and has so amended to include that count as Count VI of her accompanying “Third Amended Complaint,” which complaint we are also filing contemporaneously herewith.

Ms. Barbachano’s election is without prejudice to any right she may have to challenge any adverse rulings contained in the Court’s prior decisions in this matter, including any adverse rulings contained in the Court’s September 12, 2012 Decision and Order, [D.E. 937], the Court’s October 24, 2012 Decision and Order, [D.E. 995], the Court’s August 22, 2014 Order [D.E. 1309], and the Court’s July 29, 2015 Decision and Order [D.E. 1396].

Thus, we made plain that the Third Amended Complaint was simply adding the “uniform negligence count” to Ms. Barbachano’s Amended Complaint and that Ms. Barbachano was doing so without prejudice to any right she may have to challenge the Court’s prior orders with respect to the dismissed counts and claims contained therein. At no time was it our intent to suggest or imply that by merely filing the Third Amended Complaint that any of those dismissed counts or claims were thereby reinstated. In fact, our intent was to make plain the contrary.

Ms. Barbachano does, of course, wish to seek review of the Court’s prior orders dismissing counts and claims that she has alleged against Standard Chartered and, in that regard, because the Court’s work in this multidistrict litigation is nearly complete, Ms. Barbachano respectfully requests that the Court enter partial final judgment pursuant to Rule 54(b), Fed. R. Civ. P., on those dismissed counts and claims, as there is now “no just reason for delay.” As the United States Court of Appeals for the Fourth Circuit has explained in the multidistrict litigation context:

There is no “just reason” for delaying the dismissed plaintiffs’ appeal rights until after remand to the transferor courts. Accordingly, transferee courts in this circuit *must*, at some point prior to filing a suggestion of remand, enter final judgment under Rule 54(b) with regard to any decision or order of that court that fully disposes of “fewer than all the claims or the rights and liabilities of fewer than all the parties.”

See, e.g., In re Food Lion, Inc., Fair Labor Standards Act “Effective Scheduling” Litigation, 73 F.3d 528, 533 (4th Cir. 1996) (emphasis in original; footnote omitted). *Cf. FedEx Ground*

Honorable Victor Marrero
December 30, 2015
Page 3

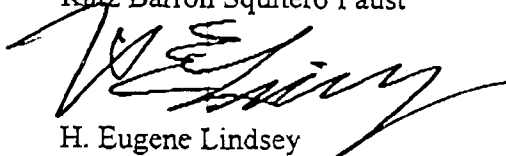
Package Sys., Inc. v. United States Judicial Panel on Multidistrict Litigation, 662 F.3d 887, 891 (7th Cir. 2011) (holding that the JPML and transferee court possess the discretion to decide whether to enter partial final judgment under Rule 54(b) prior to remand, thus allowing an immediate appeal).

Here, Ms. Barbachano's claims involving the lack of suitability of her entire portfolio are wholly unique to her; they involve no other plaintiff. Yet, Standard Chartered chose to bring Ms. Barbachano into this multidistrict litigation over her objection and the Court subsequently dismissed those claims as a matter of law. As this is the forum that Standard Chartered chose to hear Ms. Barbachano's case prior to trial, we respectfully request that the Court enter partial final judgment pursuant to Rule 54(b), finding "no just reason for delay," on those counts and claims that the Court previously dismissed with respect to Ms. Barbachano so that she may take an immediate appeal and that the Court otherwise suggest remand of her case to the Southern District of Florida.

Thank you for your time and consideration of this matter.

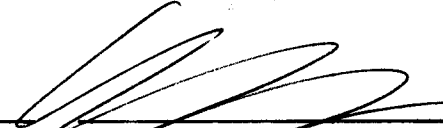
Respectfully submitted,

Katz Barron Squitero Faust



H. Eugene Lindsey

cc: Via E-mail to Counsel for SC Defendants and to
Counsel for SC Plaintiff, Headway Investment Corp.

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by	
<u>plaintiff Teresa Barbachano.</u>	
SO ORDERED.	
1-4-16	
DATE	VICTOR MARRERO, U.S.D.J.