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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 January 25, 2016 letter (“Letter”) from Robert A. Wallner, counsel for the Successor Trustee (“Trustee”) of the Greenwich Sentry (“GS”) and Greenwich Sentry Partners (“GSP”) Litigation Trusts; the PwC Defendants also are submitting a responsive letter, such that both letters together will not exceed five pages. Plaintiffs respectfully submit that the Trustee lacks standing to object to the PwC settlement (*see* Dkt. No. 1533), his objections are unfounded and he cannot meet Rule 24’s requirements for intervention.

The Trustee’s litigation in New York state court against the PwC Defendants was dismissed more than 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 August 10, 2015, and due to adjournments, the appeal will not be argued until at least March 2016.

The Letter must be addressed in light of these facts. The Trustee is seeking to inject himself into the PwC settlement, yet the only way the settlement could even hypothetically affect his claims would be if he were to prevail on an appeal that has not yet been argued and then win damages at a trial years down the road. Such wholly conjectural circumstances provide no basis to interfere with a \$55 million settlement.

**Lack of Standing.** Four months ago, the Court rejected the Trustee’s attempt to intervene and object to the Citco settlement, in which the Trustee raised the same “offset” issue asserted in the Letter. *See* Dkt. No. 1413 at 4 (Sept. 15, 2015) (the “Intervention Order”), and authorities there cited; *Bhatia v. Piedrahita*, 756 F.3d 211, 218 (2d Cir. 2014) (a “non-settling defendant generally lacks standing to object to a court order approving a partial settlement because a non-settling defendant is ordinarily not affected by such a settlement”); Dkt. No. 1071 (denying intervention by BLMIS trustee, who sought to object to settlement with the Fairfield Greenwich defendants), *aff’d*, No. 13-1392, Dkt. No. 187 (2d Cir. Sept. 3, 2014); *Cent. States*

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*Health & Welfare Fund v. Merck-Medco Managed Care*, 504 F.3d 229, 244 (2d Cir. 2007) (“[n]onparties . . . generally do not have standing to object to a settlement of a class action”). As this Court held, the Trustee is not a class member and cannot show “‘formal’ legal prejudice.” See Intervention Order at 4-5; *Bhatia v. Piedrahita*, 756 F.3d at 219 (Citco and PwC lack standing to object to settlement with Fairfield defendants in this case); *In re Amer. Int’l Group, Inc. Sec. 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’s Objections Are Meritless.** Because the Intervention Order decided the same issue as the Trustee presents here, the Trustee should be collaterally estopped. In any event, none of the Trustee’s objections to the PwC settlement warrants a result different from the Intervention Order.

**First**, the Trustee claims that “PwCIL’s failure to sign the agreement prejudices the Trustee.” Letter at 2. However, PwC International is not named as a party in the Trustee’s dismissed state court action, see *Walker*, 993 N.Y.S.2d 647, and as PwC’s letter indicates, PwC International will be bound by the Final Judgment.

**Second**, the Trustee argues that PwC “**might contend**” that certain language in the settlement “reflects this Court’s determination that PwC has colorable rights to offset the Trustee’s claims due to the settlement.” Letter at 2 (emphasis added). However, the language of the PwC settlement documents is substantively the same as the Citco settlement. Compare Dkt. No. 1533 ¶¶ 4, 16, 19 with Dkt. No. 1398 ¶¶ 4, 16.

Accordingly, the Court’s prior holding that the Trustee has no standing based on the “offset” argument is equally applicable here: “[A] settlement which does not prevent the later assertion of a non-settling party’s claims (although it may spawn additional litigation to vindicate such claims), does not cause the nonsettling party ‘formal’ legal prejudice.” Dkt. No. 1413 at 4 (quoting *Bhatia*, 756 F.3d at 219). As in the Citco settlement, Plaintiffs’ counsel will represent on the record at the final fairness hearing that the PwC settlement does not take a position either way on the “offset” issue.

**Third**, the Trustee argues that a separate settlement fund should be established for investors in each of the Fairfield funds or, alternatively, “each PwC Defendant should be required to disclose the maximum amount it would claim as an offset against the Trustee’s claims.” Letter at 2. The Trustee’s hypothetical concern is to “ensure that the Trustee’s claims are not offset by settlement amounts allocated to class members who invested in Fairfield Sentry Ltd. (by far the largest fund by reported value) and other off-shore funds.” *Id.* at 2-3. As an initial matter, the Trustee failed to object to the Fairfield and Citco settlements even though they also established unitary settlement funds. Those single-fund settlements were, of course, approved by the Court. Again, “[t]his argument is speculative and thus not sufficient to demonstrate formal legal prejudice.” Intervention Order at 6. In any event, if a breakdown of the PwC settlement consideration ever were relevant in some future proceeding, we could

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provide the Trustee with the amounts that actually were distributed from the PwC settlement to investors in GS and GSP.


**The Trustee Cannot Meet Rule 24's Requirements for Intervention.** "Failure to satisfy *any one* of [four] requirements is a sufficient ground to deny" a motion to intervene. *See Farmland Dairies v. Comm'r of N.Y. State Dep't of Agric. & Mkts.*, 847 F.2d 1038, 1043 (2d Cir. 1998 (emphasis in original); *MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc.*, 471 F.3d 377, 389 (2d Cir.2006) (requirements for intervention). 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. *Id.* As discussed, the PwC settlement documents do not address the viability of an offset either way and the Trustee can oppose an offset when and if the issue were to arise in later proceedings.

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)  
Sarah L. Cave (via email)  
Timothy A. Duffy (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 <u>the Answer Plaintiffs herein.</u>	
<b>SO ORDERED.</b>	
<u>1-29-16</u> DATE	 VICTOR MARRERO, U.S.D.J.