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## Madoff Anwar case, with \$235 million in settlement monies, finally comes to a close

By Danielle McLaughlin and Jonathan Sablone

Late last week, U.S. District Court Judge Victor Marrero issued a final judgment and order of dismissal with prejudice in the Madoff feeder fund class action *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, No. 09-CV-118 (S.D.N.Y.). The case had come to an abrupt close in January, on the eve of trial, when the sole remaining defendants, two entities associated with Pricewaterhouse-Coopers LLP (“PWC”), agreed to pay \$55 million to settle all claims against them.

The *Anwar* case is now finally concluded, after seven and a half years of litigation. *Anwar* was a consolidated proceeding against four groups of defendants that provided auditing and hedge fund administration and management services to a class of plaintiffs whose investments were obliterated by the Madoff Ponzi scheme. Defendants were entities and individuals associated with PWC, Fairfield Greenwich Group (“FGG”), Citco Group Ltd (Citco”) and GlobeOp Financial Services LLC (“GlobeOp”). Investors accused the defendants of collecting hundreds of millions of dollars in fees for their services, all the while ignoring warning signs that should have alerted them to the existence of Madoff’s fraud. Plaintiffs—nearly 1000 in the class—alleged they lost at least \$7.5 billion.

This settlement brought the total recovered by the Anwar plaintiffs to \$235 million. Of the \$55 million settlement against PWC, plaintiff’s counsel were awarded \$16.5 million, plus \$1.8 million in expenses (plus interest on both).

In his order, Judge Marrero stated that the prerequisites for a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure were met: (a) numerosity such that joinder is impracticable, (b) common questions of law and fact that predominate over individual questions, (c) the claims of Pasha and Julia Anwar are typical of the claims of the settlement class, (d) the Anwars fairly and adequately represent the class, and (e) a class action is the best way to fairly and efficiently adjudicate the action. He characterized the class as “Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 . . . and who suffered a Net Loss of principal invested in the Funds,” with certain limited exceptions.

Judge Marrero further stated that the settlement had “overwhelming” support of class members, despite the fact that a number of plaintiffs have opted out of the settlement in favor of ongoing

litigation against PwC in the Netherlands. There, the case is before the Court of Appeals of Amsterdam. Recently, some 700 investors were granted access to PwC's files related to the audits it performed on Fairfield Sentry's financial statements over the financial years 2003, 2004 and 2005.

The class action mechanism is one of a handful of avenues of recovery for Madoff victims, each with its own set of benefits and drawbacks in terms of cost and timeline. To date, some \$11 billion has been recovered on behalf of investors by the SIPA Trustee, Irving H. Picard. Single plaintiff litigation is also ongoing, and eventually the Madoff Victim Fund, which currently holds \$2.23 billion in forfeitures obtained by the United States Attorney's Office for the Southern District of New York in cases related to the BLMIS Ponzi scheme, will distribute monies based on claims submitted to the fund.

For more information on the content of this alert and to learn more about strategies for private fund litigation, please contact your regular Nixon Peabody attorney or:

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