UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES LITIGATION	:	05 Civ. 8626 (GEL)

LEAD PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR MOTION TO MODIFY THE PSLRA STAY TO PERMIT LIMITED DOCUMENT DISCOVERY

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Max W. Berger (MB-5010)
John P. Coffey (JC-3832)
Salvatore J. Graziano (SG-6854)
John C. Browne (JB-0391)
Jeremy P. Robinson
1285 Avenue of the Americas
New York, NY 10019
(212) 554-1400

GRANT & EISENHOFER P.A.
Stuart M. Grant (SG-8157)
James J. Sabella (JS-5454)
45 Rockefeller Center
New York, NY 10111
(212) 755-6501

- and -

Megan D. McIntyre
Jeff A. Almeida
Christine M. Mackintosh
Jill Agro
Chase Manhattan Centre
1201 N. Market Street
Wilmington, DE 19801
(302) 622-7000

Co-Lead Counsel for Lead Plaintiffs Pacific Investment Management Company, LLC and RH Capital LLC and the Prospective Class

Table of Contents

Page

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

ARGUMENT 5

I. THE PSLRA DISCOVERY STAY SHOULD BE MODIFIED TO PERMIT LIMITED DOCUMENT PRODUCTION 5

A. Lead Plaintiffs Have Been And Will Be Unduly Prejudiced If Document Discovery Remains Stayed 5

B. Lead Plaintiffs' Requests Are Sufficiently Particularized 11

C. Production Of The Documents Sought By Lead Plaintiffs Would Impose Little If Any Burden On Defendants 14

D. Modifying The PSLRA Stay In This Case Would In No Way Undermine The Purposes of the PSLRA 17

II. THE PSLRA DISCOVERY STAY SHOULD BE MODIFIED TO PERMIT SERVICE OF DOCUMENT PRESERVATION SUBPOENAS 18

III. CERTAIN PARTIES DID NOT OPPOSE THIS MOTION IN WHOLE OR IN PART 19

CONCLUSION 20

Table of Authorities

ASTI Communications. Inc. v. Shaar Fund, Ltd.,
No. 02 Civ. 8726, 2003 WL 1877227, (S.D.N.Y. April 2, 2003) 17

Faulkner v. Verizon Comms., Inc.,
156 F. Supp. 2d 384, 405 (S.D.N.Y. 2001) 17

Global Intellicom, Inc. v. Thomson Kernaghan & Co.,
1999 WL 223158, (S.D.N.Y. Apr. 16, 1999) 18

In re FirstEnergy Corp. Securities. Litigation,
No. 5:03 Civ. 1684, slip op. (N.D. Ohio Jan. 26, 2004) 5

In re LaBranche Securities Litigation,
333 F. Supp. 2d 178 (S.D.N.Y. 2004) 5, 12, 13, 17

In re Royal Ahold N.V. Securities & ERISA Litigation,
220 F.R.D. 246 (D. Md. 2004) 12, 13, 14-15

In re WorldCom Securities Litigation.,
234 F. Supp. 2d at 301 (S.D.N.Y. 2002) ....*passim*

Medical Imaging v. Lichenstein,
917 F. Supp. 717 (S.D. Cal, Feb. 14, 1996) 18

In re Enron Corp. Sec., Deriv. & ERISA Litig.,
MDL No. 1446, 2002 U.S. Dist. LEXIS 26261, (S.D. Tex. Aug. 15, 2002) 16

Singer v. Nicor, 2003 WL 22013905,
(N.D. Ill. April 23, 2003) 5, 15

PRELIMINARY STATEMENT

As demonstrated by the half dozen opposition briefs filed by certain defendants and one non-party (together, the "Responding Parties"[1]), those who oppose Lead Plaintiffs' Motion[2] fail to grapple with the unique facts and circumstances already prejudicing Lead Plaintiffs in this extraordinary case and reflexively revert to boilerplate arguments that provide no basis for denying Lead Plaintiffs' Motion.[3]

As an initial matter, the Responding Parties adopt divergent positions on the central issue of whether Lead Plaintiffs are entitled to any documents before motions to dismiss are decided. Notwithstanding the Court's suggestion at the February 3, 2006 hearing, Defendants Grant Thornton, Trosten, Tone Grant and Klejna and non-party Mayer Brown assert that Lead Plaintiffs should receive no documents at all. On the other hand, the Underwriter Defendants acknowledge that Lead Plaintiffs should receive the documents being produced to the Government and other regulatory bodies (the "Regulatory Documents"), but contend that Lead Plaintiffs should not receive a copy of the additional documents that the banks are presently producing to the Creditors' Committee or others.[4] As discussed below and in Lead Plaintiffs' opening papers, both positions

---

[1] Opposition briefs have been filed by the Underwriter Defendants ("UW Mem."), Defendant Grant Thornton LLP ("GT Mem."), Defendant Robert Trosten ("Trosten Mem."), Defendant Dennis A. Klejna ("Klejna Mem."), Defendant Tone Grant ("Grant Mem.") and non-party Mayer Brown Rowe & Maw LLP ("Mayer Mem.").

[2] Terms used herein have the same meaning as in Lead Plaintiffs' Memorandum of Law in Support of motion to Modify the PSLRA Stay to Permit Limited Document Discovery. References to "Coffey Decl." are to the Declaration of John P. Coffey in Further Support of Lead Plaintiffs' Motion For a Limited Modification of The PSLRA Stay of Discovery, dated June 13, 2006.

[3] The Motion now applies to Refco's documents as well. As noted in Lead Plaintiffs' opening memorandum of law, Lead Plaintiffs could not move as to Refco's own documents without limited relief from the Bankruptcy Court from the automatic stay in place by reason of Refco's bankruptcy filing. On June 9, 2006, the Bankruptcy Court entered an agreed order lifting the automatic stay solely to allow Lead Plaintiffs to ask this Court for a modification of the PSLRA stay. *See* Coffey Decl., Ex. B. In addition, at the request of the Government, Lead Plaintiffs have agreed to narrow the scope of the relief requested to exclude, at this time, the production of any interview memoranda prepared by the law firm of Latham & Watkins LLP. Coffey Decl. at ¶ 2.

[4] As discussed below, the Underwriter Defendants' assertion that they already have "offered" the Regulatory Documents to Lead Plaintiffs (UW Mem. at 2) suffers from a material omission: they fail to mention that this

(Cont'd)

are wrong and the Responding Parties' arguments should be rejected.

First, the Responding Parties argue that Lead Plaintiffs have failed to show that the Class will suffer undue prejudice if the requested discovery is denied. This argument ignores the current realities of this fast-moving litigation. Other competing parties have already used their access to discovery provided to them (but not Lead Plaintiffs) to develop and pursue claims against the same defendants and potential defendants against whom the Class has claims. As noted in Lead Plaintiffs' opening papers, for example, the Class had been placed at a significant disadvantage in the pursuit of a recovery from a financially-strapped defendant, BAWAG, because Lead Plaintiffs had been denied access to documents that a competitor for BAWAG's resources – the Creditors' Committee – had used to formulate and press its claims against BAWAG.

While a combination of fortuitous circumstances and aggressive lawyering enabled Lead Plaintiffs to overcome that obstacle and achieve an excellent proposed settlement with BAWAG, it does not change the fact that the interests of the Class were in jeopardy when Lead Plaintiffs lacked access to documents that had previously been in the possession of the Creditors' Committee. It was only because Lead Plaintiffs were able to convince BAWAG to *voluntarily* share these documents with Lead Plaintiffs that Lead Plaintiffs could make up for lost ground and negotiate what they believe is an outstanding settlement for the Class, *after* reviewing the same discovery made available much earlier to the Creditors Committee and the Government. *See* Coffey Decl. at ¶¶ 8-12. This tangible, non-speculative, and substantial prejudice was overcome in large part because Lead Plaintiffs leveraged BAWAG's urgent need to include the Class in a global resolution of its

---

"offer" was conditional upon Lead Plaintiffs agreeing not to seek any other documents, including the documents these banks are producing to the Creditors' Committee. *See* Coffey Decl. at ¶¶ 4-5.

Refco-related difficulties if it were to obtain the critical backing of the Austrian government.[5]

It is highly unlikely that such fortuitous circumstances will be available to remediate the prejudice when the Creditors' Committee races ahead of the Class against its next targets – as it inevitably will attempt. Indeed, in a recent interview with Bloomberg, counsel for the Creditors' Committee confirmed that the Creditors' Committee is "going to pursue other targets" on a shorter timetable than usual. Coffey Decl., Ex. D at 6. And, in a development rife with irony, the Creditors' Committee is seeking permission from the Bankruptcy Court to pursue discovery from Ingram Micro Inc. ("Ingram"), and cites as support facts uncovered by Lead Plaintiffs to justify the production of documents from Ingram. *See* Coffey Decl., Ex. E at ¶ 21.

The Responding Parties label Lead Plaintiffs' concern that this scenario will play out again with regard to other defendants and potential defendants as "entirely speculative." *See* UW Mem. at 14. Put another way, the Responding Parties would have the Court conclude that, because the Class was able to dodge a bullet in the case of BAWAG, it is "speculative" for Lead Plaintiffs to warn of prejudice, even as the Creditors' Committee publicly talks of reloading for its next targets. Far from being "speculative," the undue prejudice to the Class if the stay is not modified is palpable.

Second, the Responding Parties argue that Lead Plaintiffs' discovery requests are not sufficiently "particularized." The sole purpose of the PSLRA's particularization requirement, however, is to reduce the burden on the producing party by ensuring that the requested documents are easily identifiable. Here, the Responding Parties conflate the goal of the PSLRA – to avoid undue prejudice – with the means – in their view, "particularized" requests – and plainly prefer to

[5] In addition, BAWAG is in the process of marketing itself to prospective purchasers, which considerably increased the pressure on BAWAG to *voluntarily* make discovery available to Lead Plaintiffs in the hopes of reaching a global settlement. These circumstances and others allowed Lead Plaintiffs to, among other things, insist on immediate access to the documents that BAWAG provided to the Government and the Creditors' Committee notwithstanding the stay. *See* Coffey Decl. at ¶ 10.

focus on the latter without regard to the former. This tack must be rejected.

In this case, Lead Plaintiffs have definitively identified the universe of documents they seek – all documents produced to others – and it will be extremely simple for the Responding Parties to make an additional copy of the documents they already have produced to others and forward that copy to Lead Plaintiffs. As Judge Cote recognized in modifying the PSLRA discovery stay to permit plaintiffs in *In re WorldCom Sec. Litig.,* to obtain access to the documents produced to the Government and others, "defendants cannot call upon the ambiguous notion of 'particularized' discovery to bend [the PSLRA] to a purpose for which it was not intended." 234 F. Supp. 2d at 306.

Most of the Responding Parties readily concede that they will incur only minimal burden or expense if this Motion is granted. The only respondent that even attempts to construct a "burden" argument is Mayer Brown, which argues (initially) that it would have to undertake an onerous privilege review before producing documents to Lead Plaintiffs. Incongruously, Mayer Brown later admits that it is already in the process of conducting this privilege review in connection with producing documents to the Creditors' Committee. Indeed, Mayer Brown admits that approximately one-third of the documents they have produced to the Government have already been produced to the Creditors' Committee pursuant to such review. Mayer Mem. at 4. Thus, far from being exposed to any unique burden, Mayer Brown is in the same position as the other Responding Parties – at a minimum, it should provide Lead Plaintiffs with the same documents and privilege logs that it is already providing to the Creditors' Committee.

Moreover, discovery from Mayer Brown will take place in this case sooner or later and regardless of the outcome of this Motion. As Refco's primary outside counsel during the Company's final eleven years of existence, Mayer Brown's familiarity and involvement with Refco makes it a certainty that Mayer Brown is in possession of relevant discovery as to Refco. Indeed,

Mayer Brown acknowledges this point by stressing that it is preserving all Refco-related documents. Mayer Mem. at 8, n.5. Accordingly, it is only a matter of time before Mayer Brown has to endure the "burden" of producing to Lead Plaintiffs documents it already has produced to the Government and the Creditors' Committee. Lead Plaintiffs respectfully submit that, given the corresponding prejudice to the Class in these circumstances, Mayer Brown's attempt to delay this inevitable production on the grounds of burden fails.

ARGUMENT

I. THE PSLRA DISCOVERY STAY SHOULD BE MODIFIED TO PERMIT LIMITED DOCUMENT PRODUCTION

A. Lead Plaintiffs Have Been And Will Be Unduly Prejudiced If Document Discovery Remains Stayed

Lifting the stay of discovery for the limited purposes sought is necessary to prevent the Class from suffering undue prejudice. In this District, "undue prejudice has been found in situations where plaintiffs are 'prejudiced by [their] inability to make informed decisions about [their] litigation strategy in a rapidly shifting landscape' and when they are effectively 'the only major interested party in the criminal and civil proceedings . . . without access to documents that currently form the core of those proceedings.'" *In re LaBranche Securities Litigation,* 333 F. Supp. 2d 178, 182 (S.D.N.Y. 2004) (lifting stay as to documents produced in investigations by SEC and New York Stock Exchange) (quoting *In re WorldCom Securities Litigation.,* 234 F. Supp. 2d at 301, 305 (S.D.N.Y. 2002)).[6]

In *WorldCom*, where the court granted a modification to the PSLRA stay similar to the modification requested by Lead Plaintiffs here, Judge Cote stated:

---

[6] *See also Singer v. Nicor*, 2003 WL 22013905, at *2 (N.D. Ill. April 23, 2003) (stay lifted because plaintiffs would be unduly prejudiced without access to documents previously provided to the government and other agencies); *In re FirstEnergy Corp. Sec. Litig*., No. 5:03 Civ. 1684, slip op. (N.D. Ohio Jan. 26, 2004) (stay lifted because plaintiffs would be unduly prejudiced without access to documents previously produced to governmental entities).

> Without access to documents already made available to the U.S. Attorney, the SEC, and in whole or in part to WorldCom's Creditors Committee . . . [Lead Plaintiff] would be prejudiced by its inability to make informed decisions about its litigation strategy in a rapidly shifting landscape. It would essentially be the only major interested party in the criminal and civil proceedings against WorldCom without access to documents that currently form the core of those proceedings.

WorldCom, 234 F. Supp. 2d at 305 (emphasis added).

Like *WorldCom*, this action involves numerous interested parties, proceedings in a number of legal venues, and complex factual issues. Unlike the situation in *WorldCom*, however, the U.S. Attorney, the SEC and the Creditors' Committee have already demonstrated an aggressive approach to settlement in this matter, as evidenced by the rapid agreement reached with BAWAG. Although Lead Plaintiffs ultimately were able to obtain an excellent settlement with BAWAG, they found themselves playing catch-up to those parties who had already reviewed the pertinent documents and who were able to analyze those documents absent the time pressure of an impending settlement.[7]

The Responding Parties contend that Lead Plaintiffs' successful negotiation of the BAWAG settlement somehow demonstrates that the Class will not suffer any prejudice in the future as a result of the PSLRA stay. *See* Trosten Mem. at 6-9; GT Mem. at 7-14; UW Mem. at 12-18; Mayer Mem. at 7-11. In making this argument, they ignore that the BAWAG settlement negotiations were conducted under unique circumstances which enabled Lead Plaintiffs to extract a significant settlement from BAWAG. These circumstances include, among others, that: (i) the Austrian

---

[7] There is thus no merit to the Responding Parties' argument that *WorldCom* is inapposite because the settlement negotiations in that case were court-ordered. *See* Trosten Mem. at 7-8; GT Mem. at 9; UW Mem. at 15. This argument ignores the *WorldCom* court's focus on the advantage that parties not subject to a stay of discovery have over plaintiffs that are stayed. Moreover, in *WorldCom*, the first settlement did not occur until approximately nineteen months after the stay was lifted. Here, by contrast, a significant settlement has already been reached with one defendant, and the Government and Creditors' Committee continue to pursue other possible settlements without involvement of Lead Plaintiffs. Thus, the facts at bar favoring a modification of the stay are far more compelling than those in *WorldCom*.

Government issued a partial guarantee of BAWAG's debts and was apparently exerting pressure on BAWAG to reach a global settlement with all parties, including the Class, and (ii) BAWAG is in the process of marketing itself to prospective purchasers, which would have been difficult with the bank facing potential liability exposure in this case. These unique circumstances allowed Lead Plaintiffs to obtain access to the documents that BAWAG had previously provided to the Government and the Creditors' Committee and thus allowed Lead Plaintiffs to resolve their claims against BAWAG without unnecessary delay or motion to dismiss briefing. *See* Coffey Decl. at ¶¶ 8-12. It is very unlikely that such circumstances will be present the next time the Creditors' Committee uses its access to documents (that the Class does not have) to press ahead with litigation and/or settlement ahead of Lead Plaintiffs, against whom they are competing for dollars. While the Responding Parties label Lead Plaintiffs' concerns that scenarios similar to the BAWAG settlement are likely to occur in the future as "entirely speculative" (*see* UW Mem. at 14), this is at odds with readily available facts. In a recent interview with Bloomberg, counsel for the Creditors' Committee stated "<u>we are going to pursue other targets</u>, some may be obvious some may not be as obvious . . . ." Coffey Decl., Ex. D at 6 (emphasis added). In that same interview, counsel confirmed that the Creditors' Committee is using its access to documents obtained months ago to understand the issues surrounding Refco's collapse and to identify and pursue other potential sources of recovery in rapid fashion. For instance:

- "it was certainly a very important aspect of our, of the result here in the sense that we were given access to documents in January and February and March that led us to believe that BAWAG had a key role in the accounting scheme . . . ." (*id.* at 1);

- "…clearly as a result [of having the documents] we were able to file a complaint and seek recourse against BAWAG, which ultimately led to the settlement" (*id.*);

- "…our claims were strong because we had documentary evidence that they understood why these loans were being made and, confronted with that . . . . they frankly had no choice but to settle" (*id.* at 2);

- "the first thing we do is we try to cast as wide a net as we can in terms of document production, so we've asked hundreds of parties to produce documents and that ranges from entities like BAWAG, Grant Thornton, the former accountants, the lawyers, and numerous other parties" (*id.* at 7);

- "the first thing we do is we gather all these documents together and try to create a database that is searchable . . . .We have the same process for other parties that will be targets of the Creditors' Committee here . . . ." (*id.* at 8 (emphasis added)); and

- "…this case is different in the pace at which we've been proceeding in the sense that…its a . . . .fast paced liquidation and because some of the bad actors may be leaving the jurisdiction or their assets may be leaving the jurisdiction we've been forced to act very quickly." *Id.* at 12 (emphasis added).

Thus, contrary to the assertions of the Responding Parties, Lead Plaintiffs' concern that the Creditors' Committee and other interested parties are using their access to critical documents to identify and pursue other parties is far from "speculative."

Indeed, in an implicit recognition that Lead Plaintiffs are, in fact, unduly prejudiced by their lack of access to documents held by others, the Underwriter Defendants claim that they "have offered to produce to Lead Plaintiffs, as a reasonable accommodation, the nearly one million pages of [Regulatory Documents]." UW Mem. at 2. The Underwriter Defendants fail to mention, however, that this "offer" was conditioned on an agreement by Lead Plaintiffs to forego any additional discovery from the Underwriter Defendants, including the critical documents that the Underwriter Defendants will soon be producing to the Creditors' Committee. Coffey Decl. at ¶¶ 4-5. As the BAWAG settlement demonstrates, Lead Plaintiffs are bringing this Motion for the express purpose of mitigating the prejudice that the Class is suffering, and will continue to suffer, if Lead Plaintiffs are denied access to the highly relevant documents being obtained by the Creditors' Committee and other interested parties. Thus, the Underwriter Defendants' supposed "offer" to produce the Regulatory Documents – but not the other documents they are producing to the Creditors' Committee – is insufficient to cure the prejudice faced by the Class.

While the Underwriter Defendants recognize that the Class is entitled to the Regulatory Documents, they attempt to distinguish the Regulatory Documents from the additional documents that they admit they will soon be producing to the Creditors' Committee. They first claim that the Regulatory Documents are the "'core' documents related to the Refco LBO and IPO," and the documents being produced to the Creditors' Committee "are likely to be irrelevant to Lead Plaintiffs' claims against the Underwriter Defendants." UW Mem. at 16. This argument is without basis. The Creditors' Committee is seeking discovery about the circumstances and events leading up to the collapse of Refco, and the involvement and identity of the parties who are legally responsible for that collapse – the very issues that are central to this case. Thus, the core events that the Creditors' Committee are investigating (and the documents they are seeking from the Underwriter Defendants and others) are <u>identical</u> to the matters at issue in the Securities Litigation.

Both the Bankruptcy Court and the Creditors' Committee have recognized this very point. As the Creditors' Committee stated to this Court in connection with the Underwriter Defendants' motion to withdraw the reference:

> Judge Drain agreed with the Committee that the Underwriters are obvious sources of information about [Refco] because they underwrote a Refco IPO just a few months before Refco's collapse. As part of that underwriting, the Underwriters conducted due diligence and obtained Refco's most sensitive financial information. The Committee deems its investigation of the Underwriters critical.

See Sabella Decl., Ex. 9 at 3 (filed with Lead Plaintiffs' opening memorandum). There is nothing "non-core" or "irrelevant" about documents relating to (i) Refco's IPO, (ii) the Underwriter Defendants' due diligence, and (iii) Refco's most sensitive financial information.

Moreover, these documents are directly relevant to the issues that will undoubtedly be litigated in this case. For instance, the Underwriter Defendants will presumably assert a "due diligence" defense to the Securities Act claims asserted against them in the Complaint (which will indisputably survive, since no one is disputing that the pertinent registration statements were

materially misleading). Unless these banks intend to abandon the "continuous due diligence" theory that underwriters have routinely pursued in recent securities cases, the scope of documents pertinent to this defense is congruent (if not broader) to that sought in the Rule 2004 discovery. *See* Coffey Decl. at ¶¶ 6-7 (noting use of this defense in the WorldCom case, where some of these same banks were defendants).

The Underwriter Defendants next argue that it would be "fundamentally unfair" to require them to produce more than the Regulatory Documents. UW Mem. at 18-20. In making this argument, the Underwriter Defendants point to this Court's May 16, 2006 order denying their motion to withdraw the reference, which noted that the bankruptcy proceeding and the Securities litigation are governed by "different rules of discovery . . . that serve different purposes." UW Mem. at 19. From this, they suggest that this Court held that the Rule 2004 discovery being conducted by the Creditors' Committee is somehow irrelevant to the claims at issue in this case. The Underwriter Defendants overreach. Contrary to their suggestion, this Court's May 16, 2006 opinion did not even discuss whether the Rule 2004 discovery is relevant to this case, and certainly did not hold that such discovery should be exempt from production to Lead Plaintiffs. The fact that the Rule 2004 discovery might serve a different purpose – i.e., permitting creditors to investigate potential claims on behalf of a debtors' estate – does not mean that the substance of the discovery is not relevant to this case. In this case the substance of the Rule 2004 discovery overlaps exactly with the discovery needed by Lead Plaintiffs. The Underwriter Defendants note that the purpose of Rule 2004 discovery is to "discover assets, examine transactions, and determine whether wrongdoing has occurred" (UW Mem. at 11) – which are the exact same reasons that Lead Plaintiffs need access to these same documents.[8]

---

[8] The Underwriter Defendants also argue that lifting the stay as to the Rule 2004 discovery would render the confidentiality order entered by the Bankruptcy Court "meaningless." UW Mem. at 20. Lifting the stay will not

(Cont'd)

Non-party Mayer Brown asserts that there is no prejudice if its documents are not provided to Lead Plaintiffs because it is not in settlement discussions with the Creditors' Committee or regulators. Mayer Mem. at 11. Leaving aside that Mayer Brown could begin settlement talks at any point in the near future, this argument overlooks the fact that Lead Plaintiffs would still be prejudiced with respect to evaluating its options regarding other Defendants. Mayer Brown was Refco's primary outside law firm, was intimately familiar with Refco's operations and structure and – importantly – prepared some of the documents that lie at the heart of this case. Thus, Mayer Brown's documents (which already are in the hands of the Government and (at least in part) the Creditors' Committee) will not only shed light on Mayer Brown's role in Refco's collapse, but will almost certainly be relevant to the conduct of other Defendants who may well be in settlement discussions with other parties.[9]

B. <u>Lead Plaintiffs' Requests Are Sufficiently Particularized</u>

Each of the Responding Parties argues that Lead Plaintiffs' request for copies of documents they produce to others is not sufficiently "particularized." *See* Trosten Mem. at 11-13; GT Mem. at 14-18; UW Mem. at 9-12. As noted above, this is a vain effort to divert the Court's attention from the utter lack of burden the relief would impose on them if the Motion is granted. *See also* Section

---

affect the confidentiality order at all because Lead Plaintiffs will get documents directly from the Underwriter Defendants and others, not from the Creditors' Committee. More fundamentally, the notion that a confidentiality order governing the use of documents in the bankruptcy proceeding can somehow deprive this Court of the discretion to make documents available to a party in this proceeding is unsupportable.

[9] Mayer Brown acknowledges that it is the "Law Firm" described in the Amended Complaint as being responsible for negotiating and documenting the fraudulent "loan" transactions that form the core of the fraud at Refco. *See* Mayer Mem. at 1 (citing Compl. at ¶¶ 380-406). Mayer Brown asserts, however, that it merely served as a "classic scrivener" and is a "secondary actor" that can not be held liable under the securities laws. *Id.* at 1-2. Because documents from Mayer Brown will (as noted above) be pertinent regardless of Mayer Brown's status as a party or non-party to this action, Lead Plaintiffs simply state here that Mayer Brown's confidence that it is insulated from liability is, in a word, optimistic.

C below. In any event, Lead Plaintiffs' request is adequately particular.

The purpose of the particularization requirement is to minimize the burden that production might impose on the producing party. If the requests are particularized, it should be relatively easy for the producing party to locate responsive documents. That purpose is completely satisfied by a request only for documents already produced to other persons. As noted in *In re Royal Ahold N.V. Securities & ERISA Litigation*, 220 F.R.D. 246, 250 (D. Md. 2004) documents "produced in connection with internal and external investigations . . . describes a 'clearly defined universe of documents.'" The fact that the responsive documents may be voluminous does not negate the proposition that the request is sufficiently particularized. *Id.* (rejecting defendants' argument that a set of documents amounting to one million pages was not "particularized" merely because it was identifiable, stating "if 'particularized' is not synonymous with 'identifiable,' neither does it necessarily mean 'small'"). As Judge Cote stated in *WorldCom*:

> Where, as here, plaintiffs are not in any sense engaged in a fishing expedition or an abusive strike suit and do not thereby act in contravention of the fundamental rationales underlying the PSLRA discovery stay, and where plaintiffs would be substantially prejudiced by the maintenance of the stay, defendants cannot call upon the ambiguous notion of "particularized" discovery to bend Section 78u-4(b)(3)(B) to a purpose for which it was not intended.

234 F. Supp. 2d at 306.

In this case, Lead Plaintiffs' request squares perfectly with the rationale behind the PSLRA's particularization requirement. The Responding Parties do not, and could not, argue that they will have any difficulty identifying, locating, reviewing and gathering the requested documents. Indeed, they have already done so in connection with their productions to others.

Unable to distinguish the decisions in *WorldCom, LaBranche* and *Royal Ahold,* where courts found requests similar to Lead Plaintiffs' requests here to be sufficiently particularized, the Underwriter Defendants characterize these cases as against "the weight of authority." UW. Mem. at

11, n.2. But this characterization ignores the fact that requiring Lead Plaintiffs to serve "new" discovery requests on the Responding Parties that are different or more particularized than those requests in response to which the Responding Parties have already produced documents would create more rather than less, burden on the Responding Parties.

As Lead Plaintiffs have demonstrated, the circumstances in this extraordinary case are unique and have given rise to the risk of very severe prejudice to the Class if the discovery stay is not lifted – prejudice that is even more stark than that present in *WorldCom, LaBranche* and *Royal Ahold*. Accordingly, the Underwriter Defendants resort to citing a string of cases where courts rejected motions to lift the PSLRA stay because, among other reasons, the requests were not sufficiently particularized. *See* UW Mem. at 9-11. But none of these cases involved a situation where, as here, the Class was being prejudiced because both private parties and the Government were obtaining access to the critical documents and seeking to extract settlements from potential targets before the securities plaintiffs could act.[10]

The Underwriter Defendants also contend that Lead Plaintiffs' request for the Rule 2004 documents being produced to the Creditors' Committee are not "particularized" because of the "different purpose and scope of Rule 2004 discovery from that in PSLRA cases." UW Mem. at 11. As discussed above, however, the Underwriter Defendants fail to articulate how the supposedly different "purpose and scope" of Rule 2004 discovery renders the materials being produced in that context irrelevant to this case.

Separately, Grant Thornton and Mayer Brown argue that *WorldCom*, *LaBranche* and *Royal*

[10] Likewise, Grant Thornton's citation to many of the same cases cited by the Underwriter Defendants (*see* GT Mem. at 11-12) ignores the facts that this is a unique case, and that Lead Plaintiffs have demonstrated undue prejudice if the stay is not lifted. Similarly, Grant Thornton's suggestion that Lead Plaintiffs' are simply complaining about a "delay" in obtaining documents (*id.* at 13-14), fails to acknowledge the risk that the Creditors' Committee and others will again race ahead of the Class and deplete the pool of recoverable assets.

Ahold are inapplicable here because those courts only ordered the production of documents by the issuer and company executives, and not by the outside auditors or attorneys. *See* GT Mem. at 8, 10; Mayer Mem. at 9-10. However, with the exception of *Royal Ahold*, those cases did not address the issue of discovery from outside auditors or attorneys and thus do not stand for the proposition that the discovery stay cannot be lifted as to them. In any event, where, as here, the requirement of "undue prejudice" is met as to documents from the issuer, there is no coherent rationale to cut off access to documents from other participants in the matters at issue.[11]

In this case, the compelling justifications that warrant relief from the stay with respect to Refco and its executives apply equally to Grant Thornton and Mayer Brown. Even more fundamentally, there is a severe risk to the Class in this case that other parties such as the Creditors' Committee will be able to pursue claims against Grant Thornton and/or Mayer Brown while Lead Plaintiffs are kept in the dark. Because Grant Thornton and Mayer Brown admit that they have produced documents to regulators and the Creditors' Committee (*see* GT Mem. at 4; Mayer Mem. at 2-3, 4, 11), there is a very real danger that these other interested parties will extract a settlement from these entities, which – given the magnitude of their potential exposure in this case – could reduce the recoverable assets available for the Class.

C. Production Of The Documents Sought By Lead Plaintiffs Would Impose Little If Any Burden on Defendants

Lead Plaintiffs seek production of documents only after they have already been provided to other persons. Since by definition such documents would already have been assembled, reviewed for privilege, and copied any argument that it would be costly or burdensome to provide a set to

[11] As for *Royal Ahold*, although the court in that case declined to allow discovery from the auditor, it did so in large part because the documents to be produced by the issuer were likely to include documents relating to the auditor, thereby "permitting the plaintiffs to develop their case against the accountants without the need for discovery directly from the firm." 220 F.R.D. at 252. Here, there is no reason to expect that Grant Thornton's (or Mayer Brown's) documents will be produced by other parties.

Lead Plaintiffs rings hollow. "[T]he burden of production on the defendants should be relatively slight in this case because the requested materials have been produced already to other parties." *Royal Ahold,* 220 F.R.D. at 253; *accord Singer v. Nicor, Inc*., 2003 WL 22013905, at *2 ("such a production would not place an undue burden on the defendants, since they had already reviewed and compiled the documents when they produced them to the other agencies").[12] Accordingly, except for Mayer Brown, none of the Responding Parties makes any serious effort to suggest that providing Lead Plaintiffs with copies of the documents previously produced to others would be burdensome.

The sole basis for Mayer Brown's "burden" argument is its claim that it did not review the documents it produced to the government regulators for privilege, and therefore, it cannot provide Lead Plaintiffs with copies of what it produced to the regulators without first undertaking a privilege review. Mayer Mem. at 2-3. Mayer Brown's "burden" claim lacks merit. First, Mayer Brown admits just one page later in its brief, however, that it has in fact undertaken a privilege review. Mayer Mem. at 4. Specifically, Mayer Brown states that it is producing only non-privileged documents to the Creditors' Committee, and that this production is ongoing. This would not be possible without a privilege review. Thus, lifting the stay would not require Mayer Brown to do anything beyond that which it is already doing. Second, even if no privilege review had yet occurred, the court in *Royal Ahold* recognized that the need to review documents for privilege does not warrant denial of a motion to lift the PSRLA discovery stay where, as here, responsive documents have already been gathered. 220 F.R.D. at 250 n.11 (lifting stay to give securities plaintiffs access to documents produced to other entities, stating: "The court recognizes that the

---

[12] The same is true as to Lead Plaintiffs' request for documents that will be produced in other proceedings in the future. Lead Plaintiffs are not asking for advance production of such materials, but simply that, once the productions are made to other parties, Lead Plaintiffs would receive a copy. The lack of burden as to the documents that will be produced and the documents already produced is the same.

defendants may need to review the documents for privilege, but the largest task of compiling the materials should already be complete.").

Third, whether or not the stay is lifted, Mayer Brown is eventually going to have to produce its documents in this case (and conduct a privilege review if any privilege remains).[13] As the Court noted at the February 3 conference, it is highly likely that some claims against some defendants will survive the motions to dismiss.[14] As Mayer Brown was Refco's counsel and prepared many of the documents relating to the fraudulent transactions here at issue, its documents are undoubtedly relevant to the claims, regardless of whether Mayer Brown is a defendant in this action. Modifying the stay and requiring production now will change the timing but not the need for Mayer Brown to review and produce its documents.

Recognizing that production of documents already produced to other persons could not conceivably be deemed burdensome, the Responding Parties (other than Mayer Brown) instead argue that the lack of burden on them is "irrelevant." *See, e.g.,* Trosten Mem. at 13. But this argument asks the Court to overlook the rationale behind the PSRLA discovery stay. Whether requested discovery will impose a significant cost that might otherwise be avoided is central to any evaluation as to whether the stay should be modified.

Indeed, courts entertaining motions to modify the PSLRA stay have focused on the burden that the discovery sought would impose on defendants. For example, in granting a limited lifting of the stay to permit discovery of documents previously produced by the defendants, the *Enron* Court stated:

---

[13] Lead Plaintiffs reserve the right to argue that Mayer Brown's production of documents to third parties (here, the Government) has waived any privilege. That issue is not ripe because at this point Lead Plaintiffs only seek copies of non-privileged documents it has already produced to the Government and Creditors' Committee.

[14] This is virtually certain with regard to the Securities Act claims against the statutory defendants linked to Refco's securities offerings, since it is inconceivable that any Defendant would argue that the pertinent offering materials were not materially misleading.

> While recognizing that the PSLRA's discovery stay protected Defendants from unnecessary discovery costs, Lead Plaintiff argues that here the burden would be slight because Enron has already found, reviewed, and organized the documents. The Court agrees. In a sense this discovery has already been made, and it is merely a question of keeping it from a party because of the strictures of a statute designed to prevent discovery abuse.

See also WorldCom, 234 F. Supp. 2d at 305 ("it is customary to consider whether a production request places an undue burden on the party from which it is requested"); *Labranche,* 333 F. Supp. 2d at 181; *ASTI Comms. Inc. v. Shaar Fund, Ltd.*, No. 02 Civ. 8726, 2003 WL 1877227, at *2 (S.D.N.Y. April 2, 2003). And in *Faulkner v. Verizon Comms., Inc.*, 156 F. Supp. 2d 384, 405 (S.D.N.Y. 2001), on which Responding Parties rely,[15] Judge Conner noted that "those courts who have decided to lift the stay have done so in part because the limited discovery request would not impose additional discovery costs on the defendants." Far from "irrelevant," the lack of burden on Defendants is a key factor supporting Lead Plaintiffs' Motion in this case.

D. Modifying The PSLRA Stay In This Case Would In No Way Undermine The Purposes of the PSLRA

The Responding Parties argue that modifying the PSLRA stay as requested is contrary to Congress' intent and the purposes of the PSLRA. *See* UW Mem. at 20-22; Mayer Mem. at 4-7; GT Mem. at 6-7. They argue that "the purpose of the PSLRA would be thwarted if Lead Plaintiffs were permitted to use the potential fruits of...discovery in opposing any motions to dismiss or in reformulating a second amended complaint." *See* UW Mem. at 5, 20-22; *see also* Mayer Mem. at 4-5; Trosten Mem. at 9-10.

The Responding Parties misapprehend the purpose of the PSLRA discovery stay. It is well-established that the stay is designed to prevent plaintiffs from conducting wide ranging "fishing expeditions" in order to drum up sustainable claims and protects defendants from abusive and

[15] UW Mem. at 9-10; Mayer Mem. at 4; GT Mem. at 12, 15; Trosten Mem. at 11-13.

expensive discovery demands seeking to extort early settlements. *See, e.g., WorldCom*, 234 F. Supp. 2d at 305 ("the legislative history of the PSLRA indicates that Congress enacted the discovery stay in order to minimize the incentives for plaintiffs to file frivolous securities class actions."). These two scenarios are not present in this case.

Here, the Class has non-frivolous claims (and, indeed, a proposed settlement of $108 million as to one defendant already). Nor is the requested discovery burdensome to the Responding Parties. Thus, it would not be contrary to Congress' intent to modify the PSLRA stay as requested even if, as consequence, additional evidence of wrongdoing would be revealed to Lead Plaintiffs prior to litigation of defendants' anticipated motions to dismiss.[16]

II. THE PSLRA DISCOVERY STAY SHOULD BE MODIFIED TO PERMIT SERVICE OF DOCUMENT PRESERVATION SUBPOENAS

The Responding Parties present no substantial arguments against service of document preservation subpoenas on non-parties, but some complain that Lead Plaintiffs aught to identify the potential recipients of those subpoenas.

With respect to the identities of the non-parties on whom Lead Plaintiffs intend to serve document preservation subpoenas, Lead Plaintiffs' investigation is continuing, but they expect to serve such subpoenas on a number of entities that have been identified during Lead Plaintiffs' investigation and/or in filings made in connection with the criminal prosecution of Phillip Bennett and the ongoing Refco Bankruptcy Proceedings. These entities include Liberty Corner Capital Strategies, LLC; Delta Flyer Fund, LLC; Ingram Micro Inc.; Ernst & Young LLP;

---

[16] Other courts have recognized that the discovery stay is not designed to operate as an impenetrable shield to protect wrongdoers. *See Global Intellicom, Inc. v. Thomson Kernaghan & Co.*, 1999 WL 223158, at *2 (S.D.N.Y. Apr. 16, 1999) (finding plaintiff had "made a showing of undue prejudice to justify taking particularized discovery," in the absence of which plaintiff might have been prevented from seeking redress for the alleged violations) and *Medical Imaging v. Lichenstein*, 917 F.Supp. 717 (S.D. Cal, Feb. 14, 1996) (a stay of discovery would cause undue prejudice where it may "shield ... [defendants] from eventual liability for any material violations of the securities laws").

PricewaterhouseCoopers, LLP; Levine Jacobs and Co. LLC; McDermott Will & Emery; Niederhoffer Investments Inc.; Edward McElwreath; Thomas Dittmer; Thomas Hackl; Mark Kavanagh; Chris Sugrue; and David Weaver. The requested subpoenas are necessary because several of these entities have not been involved with Refco for many years and may not be aware of any obligation to preserve documents relating to Refco. Moreover, other individuals, such as Thomas Hackl, are not residents of the United States and may be unaware of any obligation to preserve the relevant documents in their possession.[17]

III. CERTAIN PARTIES DID NOT OPPOSE THIS MOTION IN WHOLE OR IN PART

The Underwriter Defendants state in their brief that they stand ready to produce the Regulatory Documents. UW Mem. at 2. Moreover, several defendants have not opposed this Motion at all. These include Thomas H. Lee Partners and all of the Individual Defendants (except for Trosten, Grant and Klejna). Accordingly, the Court should permit Lead Plaintiffs to immediately obtain the Regulatory Documents from the Underwriter Defendants and all requested discovery from the aforementioned Defendants.

---

[17] Separately, Mayer Brown asserts that it has already been served with document subpoenas and that it understands its document preservation obligations (Mayer Mem. at 8, n.5), so there is no reason to modify the stay to permit the preservation subpoenas to be served. First, Mayer Brown does not even fall into the document preservation category on this Motion, since Lead Plaintiffs seek document production, not mere document preservation, from Mayer Brown. Second, while Mayer Brown cites the subpoenas served upon it from other Refco litigation as its reason for preserving documents (*see* Mayer Mem. at 8 n.5), this actually confirms the risk that other third parties who have not been served with any subpoena will, absent a preservation subpoena, fail to safeguard their documents during the pendency of Defendants' motions to dismiss.

CONCLUSION

For the reasons set forth herein and in Lead Plaintiffs' Opening Memorandum and herein, Lead Plaintiffs' motion to modify the PSLRA's discovery stay should be granted.

Dated: New York, New York
June 13, 2006

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: /s/ John P. Coffey
/s/ John C. Browne

Max W. Berger (MB-5010)
John P. Coffey (JC-3832)
Salvatore J. Graziano (SG-6854)
John C. Browne (JB-0391)
Jeremy P. Robinson
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

GRANT & EISENHOFER P.A.

By: /s/ James J. Sabella

Stuart M. Grant (SG-8157)
James J. Sabella (JS-5454)
45 Rockefeller Center, 15th Floor
Telephone: (646) 722-8500
Facsimile: (646) 722-8501

- and -

Megan D. McIntyre
Jeff A. Almeida
Christine M. Mackintosh
Jill Agro
Chase Manhattan Centre
1201 North Market Street
Wilmington, DE 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100

Co-Lead Counsel for Lead Plaintiffs and the Prospective Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES LITIGATION	:	05 Civ. 8626 (GEL)

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2006, Lead Plaintiffs' Reply Memorandum In Further Support of Their Motion To Modify The PSLRA Stay to Permit Limited Document Discovery was filed with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to the following parties:

Bradley E. Lerman, Esquire
Bruce Roger Braun, Esquire
Linda T. Coberly, Esquire
WINSTON & STRAWN
35 West Wacker Drive
Chicago, IL 60601
Emails: blerman@winston.com.
bbraun@winston.com, Icoberly@winston.com
Counsel to Defendant Grant Thornton LLP

Stuart I. Friedman, Esquire
Ivan O. Kline, Esquire
Elizabeth D. Meacham, Esquire
FRIEDMAN & WITTENSTEIN P.C.
600 Lexington Avenue
New York, NY 10022
Emails: sfriedman@friedmanwittenstein.com,
emeacham@friedmanwittenstein.com,
ikline@friedmanw ittenstein.com
Counsel to William Sexton

David Emilio Mollon, Esquire
James David Reich, Jr., Esquire
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Emails: jreich@winston.com,
dmollon@winston.com
Counsel to Defendant Grant Thornton LLP

Richard E. Nathan, Esquire
NATHAN LAW FIRM
123 South June Street
Los Angeles, CA 90004
Email: renathan@att.net
Counsel to Dennis Klejna

Helen B. Kim, Esquire
BAKER HOSTETLER
333 South Grand Avenue, Suite 1800
Los Angeles, CA 90071
Email: hkim@bakerlaw.com
Counsel to Dennis Klejna

Mark D. Powers, Esquire
BAKER HOSTETLER
666 Fifth Avenue
New York, NY 10103
Email: mpowers@bakerlaw.com
Counsel to Dennis Klejna

Holly K. Kulka, Esquire
HELLER EHRMAN WHITE &
MCAULIFFE, LLP
7 Times Square
New York, NY 10036
Email: hkulka@hewm.com
Counsel to Phillip Silverman

Barbara Moses, Esquire
Rachel Korenblat, Esquire
MORVILLO, ABRAMOWITZ, GRAND,
IASON & SILBERBERG, P.C.
565 Fifth Avenue
New York, NY 10017
Email: bmoses@magislaw.com
Counsel to Robert Trosten

George Theodore Peters, Esquire
WOLF HALDENSTEIN ADLER FREEMAN
& HERZ
270 Madison Avenue
New York, NY 10016
Email: peters@whafh.com
Counsel to Irv Kreitenberg

Samuel Howard Rudman, Esquire
LERACH, COUGHLIN, STOIA, GELLER,
RUDMAN & ROBBINS, LLP(LIS)
58 South Service Road
Suite 200
Melville, NY 11747
Email: srudman@lerachlaw.com
Counsel to Joseph Mazur

James Joseph Sabella, Esquire
GRANT & EISENHOFER P.A. (NY2)
45 Rockefeller Center, 630 Fifth Avenue, 15th
Floor
New York, NY 10111
Email: jsabella@gelaw.com
*Counsel to Pacific Investment Management
Company LLC, RH Capital Associates LLC,
PIMCO Funds: Pacific Investment
Management Series - PIMCO High Yield Fund*

Melinda Marie Sarafa, Esquire
ZUCKERMAN, SPAEDER, GOLDSTEIN,
TAYLOR & KOLKER, LLP (NYC)
1114 Avenue of the Americas
New York, NY 10036
Email: msarafa@zuckerman.com
Counsel to Tone Grant

David R. Scott, Esquire
SCOTTO & SCOTTO
17 Battery Place, Suite 1226
New York, NY 10004
Email: drscott@scott-scott.com
*Counsel to The Refco Unified Shareholder
Team*

Evan J Smith, Esquire
BRODSKY & SMITH, L.L.C.
240 Mineola Blvd.
Mineola, NY 11501
Email: esmith@brodsky-smith.com
Counsel to Banyan Capital Fund, LP

Shelley Thompson, Esquire
LABATON RUDOFF & SUCHAROW LLP
100 Park Avenue
12th Floor
New York, NY 10017
Email: sthompson@labaton.com
Counsel to Matthew Larson

Further, I caused the aforesaid documents to be sent via First-Class U.S. Mail to the following parties:

Matthew Sava , Esquire
Yoram Jacob Miller, Esquire
SHAPIRO FORMAN ALLEN SAVA & MCPHERSON LLP
380 Madison Avenue
New York, New York 10017
Counsel to Defendant Gerald Sherer

Michael T. Hannafan, Esquire
Blake Hannafan, Esquire
MICHAEL T. HANNAFAN & ASSOCIATES
One East Wacker Drive, Suite 1208
Chicago, IL 60601
Counsel to Defendant Tone N. Grant

Jeffrey T. Golenbock, Esquire
Adam C. Silverstein, Esquire
GOLENBOCK EISEMAN ASSOR BELL & PESKOE LLP
437 Madison Avenue
New York, NY 10022-7302
Counsel to Defendants Refco Group Holdings, Inc.,Phillip Bennett and The Phillip R. Bennett Three YearAnnuity Trust

Andrew Levander, Esquire
DECHERT LLP
30 Rockefeller Plaza
New York, NY 10112-2200
Email: andrew.levander@dechert.com
Counsel to BAWAG P.S.K. Bank fur Arbeit und Wirtschaft und Osterreichische Postsparkasse Aktiengesellschaft

Greg A. Danilow, Esquire
Robert Francis Carangelo, Esquire
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
Counsel to Defendants Thomas H. Lee, David V Harkins, Scott L. Jaeckei, Scott A. Schoen, Nathan Gantcher, Leo R. Breitman, Ronald L. 0 'Kelley, Thomas H. Lee Partners, L.P., Thomas 1-I Lee Equity Fund V. L.P., Thomas H. Lee Parallel Fund V., L.P., Thomas H .Lee Equity (Cayman,) Fund V. L.P., THL Equity Advisors V. LW, Thomas H. Lee Investors Limited Partnership

John V.H. Pierce, Esquire
Robert Bruce McCaw, Esquire
Dawn M. Wilson, Esquire
Michael Hun Park, Esquire
Michael Feinberg, Esquire
Lori A. Martin, Esquire
WILMER, CUTLER & PICKERING
399 Park Avenue
New York, NY 10022
Counsel to Defendants Credit Suisse First Boston LLC,Goldman Sachs & Co., Bank of America Securities LLC,Merrill Lynch Pierce Fenner & Smith Inc., Deutsche Bank Securities Inc., .JP Morgan Securities Inc., Sandier O 'Neil Partners LP, HSBC Securities (USA) Inc.,William Blair & Company LLC, Harris Nesbitt Corp.,Samuel A. Ramirez & Company, Muriel Siebert & Co.,Inc., The Williams Capital Group,and Utendahl Capital Partners

Catherine W. Joyce, Esquire
WINSTON & STRAWN
35 West Wacker Drive
Chicago, IL 60601
Counsel to Defendant Grant Thornton LLP

Christopher Morvillo, Esquire
MORVILLO, ABRAMOWITZ, GRAND, IASON & SILBERBERG, P.C.
565 Fifth Avenue
New York, NY 10017
Counsel to Defendant Robert Trosten

Alan N. Salpeter, Esquire
MAYER, BROWN, ROWE & MAW LLP
71 S. Wacker
Chicago, Illinois 60606-4637
Counsel to Defendant Mayer, Brown, Rowe & Maw LLP

Westminster-Refco Management LLC
One World Financial Center
200 Liberty Street, Tower A
New York, New York 10281

Refco Managed Futures LLC
One World Financial Center
200 Liberty Street, Tower A
New York, New York 10281

Joseph J. Murphy
1038 Bloomfield St.
Hoboken, NJ 07030

Robert Trosten
895 Scioto Drive
Franklin Lakes, NJ 07417

Lind-Waldock Securities LLC
550 W. Jackson Blvd., Suite 1300
Chicago, IL 60661

CMG Institutional Trading LLC
123 North Wacker Drive, Suite 1150
Chicago, IL 60606

Santo C. Maggio
1825 8th Street So.
Naples, FL 34102

/s/ John C. Browne________