

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PLUMBERS, PIPEFITTERS AND APPRENTICES
LOCAL NO. 112 PENSION FUND,

Plaintiff,

-against-

CIT GROUP INC. et al.,

Defendants.
----- X

TODD KATZ

Plaintiff,

-against-

CIT GROUP INC. et al.,

Defendants.
----- X

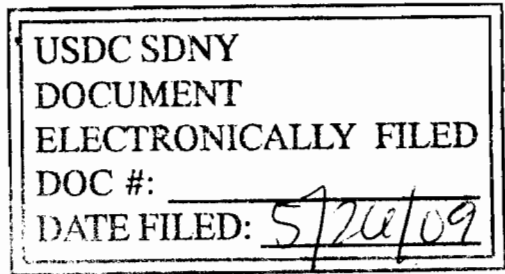
JAMES APOSTLE

Plaintiff,

-against-

CIT GROUP INC. et al.,

Defendants.
----- X



08 CV 6613 (BSJ)

08 CV 7256 (BSJ)

08 CV 7431 (BSJ)

ORDER

Barbara S. Jones, *District Judge*.

Before the Court are competing applications seeking consolidation, appointment as lead plaintiff, and appointment of lead counsel in the above captioned class actions.

Consolidation

These actions have been brought on behalf of CIT Group shareholders for alleged securities violations. The actions name similar defendants and involve similar factual and legal issues. They each allege injuries caused by defendants' fraud that was perpetrated through the issuance of materially false and misleading statements. The Court has heard no reason why it would be necessary to divide the class between preferred shareholders and common shareholders. Those groups will litigate largely the same questions of law and fact and can be adequately represented in a single class.

Consolidation is appropriate pursuant to Rule 42(a). These actions---08 CV 6613, 08 CV 7431, and 08 CV 7256 are consolidated.

Lead Plaintiff

The appointment of a lead plaintiff under the PSLRA entails a two-step process. First, the PSLRA sets forth a rebuttable presumption that "the most adequate plaintiff" is "the person or group of persons" who (a) has either filed the complaint or made a motion for appointment as lead plaintiff, (b) has "the largest financial interest in the relief sought by the class," and (c) "otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Second, once the court has determined which class member is entitled to the presumption, other members of the purported class may try to rebut the presumption by showing that the presumptive lead plaintiff will not fairly and adequately protect the interests of the class or is, because of

“unique defenses,” incapable of adequately representing the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Here, several potential class members---including Pensioenfonds Horeca & Catering (“PH&C”), Saratoga Large Capitalization Value Portfolio, Victor Egner, and Don Pizutti (SEB Investment Mangement AB withdrew its application)---filed timely applications for appointment as lead plaintiff in this case.

Of those applicants, PH&C clearly has the greatest financial interest in this litigation, with claimed losses of over \$4.2 million.

PH&C also satisfies the requirements of Rule 23, which at this stage demands a preliminary showing that the applicant’s claim is typical and that the applicant is an adequate representative of the potential class. *In re Initial Pub. Offering Sec. Litig.*, 214 F.R.D. 117, 121 (S.D.N.Y.2002) (citing *In re Crayfish Co. Sec. Litig*, No. 00 Civ. 6766, 2002 WL 1268013, at *4 (S.D.N.Y. June 6, 2002). PH&C has made such a showing here. Its claim is typical---like each of the consolidated class actions complaints, PH&C alleges that CIT overstated its net income by failing to adequately accrue its loan loss provisions with respect to the Silver State loan portfolio, and thereby committed securities fraud. PH&C is also an adequate representative of the class---its claim does not appear to conflict with the claims of other potential class members and its counsel is qualified, experienced and able to conduct this litigation.

No other party here has rebutted the presumption that PH&C is the most adequate plaintiff.

There have been questions raised regarding PH&C’s relationship to Goldman Sachs. It appears that Goldman played some role in CIT’s preferred stock offering and

generally acted as a financial advisor to CIT. Goldman is also one of PH&C's financial advisors. Some parties have suggested that Goldman may be named as a witness or even a defendant later in this litigation. However, even in this event, PH&C's relationship to Goldman does not appear to rise to such a level as to make PH&C an inappropriate lead plaintiff. Goldman is only one of many financial advisors to PH&C. There is no reason to think that if Goldman were to be named in this suit at some later date, PH&C wouldn't adequately represent the class against them. The mere fact that Goldman may at some point be involved in this litigation and has also advised PH&C does not create such a direct link between PH&C and the defendant that the Court is led to conclude that a conflict exists or that unique defenses are likely to be raised. Moreover, there is no indication, as has been suggested, that PH&C received non-public information from Goldman pertaining to CIT. This allegation is purely speculative, and does not establish any conflict or suggest that PH&C is likely to be subject to unique defenses.

Further, one competing lead plaintiff applicant has questioned the wisdom of appointing as lead plaintiff a foreign class member (PH&C is based in the Netherlands). The Court, however, sees no reason to believe that jurisdiction over PH&C's claim will be an issue in this litigation. Nor does the Court believe that this foreign-based plaintiff will present any practical difficulties in the organization of the class or the maintenance of this litigation.

PH&C's presumptive status as lead plaintiff has not been rebutted. The Court therefore finds that PH&C will act as the lead plaintiff in these consolidated class actions.

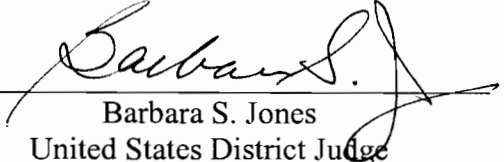
Lead Counsel

PH&C has selected the law firm of Coughlin Stoia Geller Rudman & Robbins LLP to act as lead counsel. A competing applicant has argued (for the first time at an oral hearing on May 13, 2009) that this law firm may face a conflict of interest due to the portfolio monitoring system that it maintained for PH&C and that led to its representing that party here. However, the Court has been shown no reason why this monitoring system would cause any issues or impediments to the firm's representation of PH&C or the class, generally.

This firm has substantial experience in representing shareholders in securities class actions, and has served as lead counsel in several cases. The Court believes that the firm will serve the class adequately. The Court approves PH&C's selection of lead counsel.

SO ORDERED:

Dated: May 22, 2009


Barbara S. Jones
United States District Judge