

0B3JJONM Motions

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
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2
3 MARK K. JONES, et al.,

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4 Plaintiffs,

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5 v. 10 Civ. 3864 AKH

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6 PFIZER, INC., et al.,

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7 Defendants.

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November 3, 2010
3:13 p.m.

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Before:

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HON. ALVIN K. HELLERSTEIN,

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District Judge

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1 (In open court)

2 (Case called)

3 THE COURT: The Meister plaintiffs are here?

4 MR. ROBBINS: I do not believe they're here, your

5 Honor.

6 MR. NARWOLD: I believe they filed something
7 indicating they're no longer seeking the plaintiff counsel
8 status in this case. I believe they filed it yesterday.

9 THE COURT: I heard something about an agreement among
10 plaintiffs. Is that so?

11 MR. LEVIT: I don't believe so, your Honor.

12 THE COURT: I see you're contested. Mr. Levit, I ask
13 you first because you're sitting on my right and you're the
14 most handsome of everybody here.

15 MR. LEVIT: Thank you, your Honor. I don't know if
16 that is true.

17 THE COURT: How do I decide who has the largest loss?

18 That is the criterion that is most important, is it
19 not?

20 MR. LEVIT: Yes, it is the criterion that is most
21 important, your Honor, as courts have recognized.

22 However, courts also look to what is known as the four
23 lax factors, and if I may, your Honor, I'll refer first to a
24 chart showing -- actually, your Honor, I have a handout.

25 May I approach?

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1 THE COURT: Let me just get the groundwork first:
2 What is this criteria?

3 MR. LEVIT: You look at the four lax factors which are
4 number of shares purchased during class period, the number of
5 net shares purchased during the class period, the total net
6 funds expended during the class period and the approximate loss
7 suffered.

8 On three of those four lax factors, as our chart
9 indicates, Oklahoma and Union are the overwhelming winners, I
10 guess you would call it, on those factors.

11 THE COURT: Or losers?

12 MR. LEVIT: Or losers, however you want to refer to
13 it. We have looked for other similar cases to this, and there
14 do not seem to be lead plaintiff cases where you have one party
15 who overwhelmingly wins or loses on three of those factors and
16 the fourth factor is somewhat contested.

17 Now, we believe that even --

18 THE COURT: Everybody figures losses differently.

19 MR. LEVIT: That's correct.

20 THE COURT: Before we get into the nitty-gritty of
21 this, let me understand from Mr. Robbins what is Philips' claim
22 to be lead counsel?

23 MR. ROBBINS: Thank you, your Honor.

24 Philips' entitlement to the lead plaintiff position in
25 this case arises from the fact that it has the largest

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1 financial interest in the relief sought, which is the wording
2 of the statute.

3 THE COURT: Largest financial interest?

4 MR. ROBBINS: In the relief sought by the class which
5 is the wording of the PSLRA.

6 THE COURT: Does that mean you loss the most?

7 MR. ROBBINS: Correct, suffered the largest loss.

8 THE COURT: You take issue with what I learned from
9 Mr. Levit?

10 MR. ROBBINS: I do. In this district and throughout
11 the country courts regularly focus and emphasize it is loss
12 that will dictate the outcome. Why is that? Every court of
13 appeals --

14 THE COURT: He told me his loss is the largest.

15 MR. ROBBINS: He is incorrect, and I would be glad to
16 illustrate as we get into why that is inaccurate.

17 THE COURT: I understand that. You're claiming that
18 your loss is larger than his loss?

19 MR. ROBBINS: That is correct.

20 THE COURT: What is your loss?

21 MR. ROBBINS: Our loss is \$21 million under FIFO, your
22 Honor, and more than \$19 million under LIFO.

23 THE COURT: Mr. Levit, what is your loss?

24 MR. LEVIT: Your Honor, we calculated losses --

25 THE COURT: Tell me. I can't see it.

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1 MR. LEVIT: I could give you this handout.
2 THE COURT: Just tell me.
3 MR. LEVIT: We have losses of \$14,705,000, and we
4 calculated Philip's losses under that approach as
5 \$14,430,275.00 greater loss.
6 THE COURT: How do I find that? How do I find out the
7 truth of these cross-assertions?
8 MR. LEVIT: Your Honor, we believe we set forth the
9 proper way to calculate losses which is using the LIFO
10 accounting method and, more importantly, taking into account
11 DURA. The Supreme Court in DURA --
12 THE COURT: You have to net it out?
13 MR. LEVIT: Yes.
14 THE COURT: Which means all the in-and-outs go --
15 MR. LEVIT: Are disregarded. You cannot get a
16 recovery on those in-and-outs. That is what DURA says and that
17 is what the Comverse case applied and other cases.
18 THE COURT: The trouble is that you have to match
19 these in a way that makes it very difficult for me to do that.
20 There are different ways of figuring it out.
21 MR. LEVIT: That's correct, your Honor, there are
22 different ways and we tried to present those different ways in
23 our brief. We showed that under two methods, the Oklahoma and
24 Union plaintiffs had greater losses.
25 In one method, Philips had a slightly greater loss of

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1 11,000 out of about 15 million.

2 THE COURT: Now, the class period is roughly 7 days
3 in -- I am sorry -- 5 days in January 2000 -- I am sorry -- it
4 starts from January 2006 and goes on to January 2009?

5 MR. LEVIT: That's correct.

6 THE COURT: Have each of your clients filed taxes for
7 those periods of time?

8 MR. LEVIT: I would believe so.

9 THE COURT: Because it would be interesting to know
10 how you did according to your tax filings. The tax filings
11 would -- it could be a tax filing, it could be an SEC filing.
12 In an SEC filing, you want to minimize your loss. In a tax
13 filing, you want to take the benefit of the largest loss
14 possible. I could take comparisons and be more intelligent
15 that way. How would that come out, do you know?

16 MR. LEVIT: Offhand I don't know what those would
17 show, but that is still a tax or accounting method which isn't
18 necessarily applicable to a lead plaintiff determination.

19 THE COURT: That is true. So how do I do this without
20 wasting a lot of time?

21 MR. LEVIT: Your Honor, could I suggest another
22 approach to look at this?

23 THE COURT: Yes.

24 MR. LEVIT: That is to look at the net shares. We
25 believe that if you look at the net shares purchased which are

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1 retained at the end of the class period, that is probably the
2 best way to measure the recoverable losses. Those are the
3 shares that are damaged, those are the shares on which all
4 plaintiffs, all class members are going to obtain their
5 recovery. If you look at the recoverable losses based on the
6 net shares, once again Oklahoma and Union have twice as many
7 recoverable potential losses as Philips.

8 THE COURT: The problem, Mr. Levit, is that whatever
9 methodology you propose, there is an alternate methodology.

10 MR. LEVIT: Well, that's correct. We're trying to
11 come up with the best methodology, and that is another reason
12 to look at all four of the lax factors. Once again, our two
13 plaintiffs --

14 THE COURT: I'll give you time and Mr. Robbins the
15 time to develop it. Is there any quantity of shares that were
16 purchased on markets outside the United States?

17 MR. ROBBINS: Not from my client, your Honor.

18 THE COURT: Mr. Levit?

19 MR. LEVIT: No.

20 THE COURT: Mr. Narwold.

21 MR. NARWOLD: No. All shares purchased were here in
22 it United States.

23 THE COURT: What is your role in this? Are you
24 joining anyone else?

25 MR. NARWOLD: We are together, your Honor. We have
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1 moved jointly, Union and Oklahoma have moved together in this
2 case.

3 THE COURT: Mr. Levit's numbers are the sum?

4 MR. NARWOLD: Sum of both our numbers, correct.

5 THE COURT: But yours, Mr. Mandel, is not, right?

6 MR. ROBBINS: Robbins.

7 THE COURT: Mr. Robbins, sorry.

8 MR. ROBBINS: We represent just the Philips Pension
9 Fund. We are not a part of their group and we contest their
10 motion and multiple calculations of their losses, your Honor.

11 It is our position the losses the parties used
12 initially and asked this court to endorse in their filings were
13 the truthful losses, and whether you utilize LIFO or FIFO, it
14 makes no difference.

15 If I may put my chart up, your Honor?

16 THE COURT: Let me start with Mr. Levit. Go first,
17 Mr. Levit, and I'll get Mr. Robbins and figure it out.

18 MR. LEVIT: All right. As I said, the lax factors
19 must be considered on a lead plaintiff motion.

20 THE COURT: Lax factors are named for the case, right?

21 MR. LEVIT: Named for the Lax case, correct. As we
22 have shown on the purchased shares in the class period,
23 Oklahoma and Union have just about doubled the amount as
24 Philips.

25 THE COURT: Give me the numbers.

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1 MR. LEVIT: The numbers are \$4,624,100 for Oklahoma
2 and Union.
3 THE COURT: 4.6 million?
4 MR. LEVIT: Yes. And for Philips, it is 2.38 million.
5 On net shares for Oklahoma and Union --
6 THE COURT: Equivalent to the amount of shares left at
7 the end of the period?
8 MR. LEVIT: Net, it takes the shares purchased and
9 you're subtracting ones sold during the class period.
10 THE COURT: You have the shares remaining at the end
11 of the period?
12 MR. LEVIT: Yes, that would be 2.66 million for
13 Oklahoma and Union, and for Philips it is 1.3 million.
14 THE COURT: Okay.
15 MR. LEVIT: On the net funds expended during the class
16 period, and that is --
17 THE COURT: A total cost of buying?
18 MR. LEVIT: -- total cost of buying less the gains you
19 made from your sales for the funds -- proceeds you received
20 from your sales.
21 THE COURT: Costs less revenues?
22 MR. LEVIT: For Oklahoma and Union, the net funds were
23 52 million point 2; and for Philips, it is 37 million point 4.
24 THE COURT: All right.
25 MR. LEVIT: The final lax category is the loss, the
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1 approximate loss which we've calculated in our brief under
2 three methods using LIFO and applying DURA. We believe that
3 LIFO is the only appropriate method to use because that
4 accounts for sales that are made during the class period rather
5 than cancelling out pre-class period purchases.

6 THE COURT: You must take out anything bought before
7 the period?

8 MR. LEVIT: Correct.

9 THE COURT: It doesn't necessarily mean LIFO or FIFO;
10 it means that you can't escape the limitation of law since it
11 is in connection with the purchase here about which you both
12 complain. So it is the number of shares purchased during the
13 class period less the number of shares of that group sold I
14 think at any time?

15 MR. LEVIT: Yes, we would agree with that.

16 Under the FIFO method, sales within the class period
17 are taken out of the calculation and matched against pre-class
18 period purchases, which is why --

19 THE COURT: That is not relevant. You cannot go for
20 the purposes of that calculation to deal with a purchase made
21 before the period because only those purchases are made during
22 the period are arguably in connection with a fraudulent
23 transaction.

24 MR. LEVIT: That's correct, we agree with that. That
25 is why we believe --

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1 THE COURT: But it doesn't have to be synonymous with
2 LIFO. If you did the methodology, I am saying, in other words,
3 take the shares purchased during the period as your numerator
4 and the shares sold at any time after that as the denominator
5 and subtract the second from the first, you get the loss.
6 MR. LEVIT: That would be the net shares which we show
7 on our chart there.
8 THE COURT: That is the 2.66 million?
9 MR. LEVIT: Yes, we agree with that, your Honor.
10 THE COURT: Okay. Anything else you want to tell me
11 before I turn to Mr. Robbins?
12 MR. LEVIT: Well, I would just like to emphasize that
13 we believe that DURA must be applied here because in-and-out
14 trades cannot be considered.
15 THE COURT: I agree.
16 MR. LEVIT: And the final point is to emphasize that
17 as we just said --
18 THE COURT: That is why I just said what I said
19 before.
20 MR. LEVIT: Yes, net shares we believe is probably the
21 most important factor here.
22 THE COURT: Okay.
23 MR. LEVIT: Thank your Honor.
24 THE COURT: Mr. Robbins.
25 MR. ROBBINS: Thank your Honor.

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1 THE COURT: First, you disagree with any numbers given
2 here?

3 MR. ROBBINS: I do, your Honor, and I can illustrate
4 it this way. Your Honor, these numbers illustrate the losses
5 that were claimed in the original motions by Union and Oklahoma
6 here under the FIFO test when they made their motion and said
7 to this court this was their financial interest. They claimed
8 a collective 18.9 million under FIFO and 17.4 million under
9 LIFO.

10 THE COURT: But the numbers are much different.

11 MR. ROBBINS: The numbers are much different now
12 because once they saw under those same calculations Philips had
13 a dramatically larger loss counted in the millions regardless
14 of how it was calculated.

15 They opportuned the court to consider a variety of
16 other methods. What you describe which is correct, that is
17 shares acquired prior to the class period cannot be in
18 connection with the alleged fraud because they were acquired
19 before the alleged fraud occurred; and, therefore, they don't
20 meet the basic in connection test. They must be taken out of
21 the equation.

22 THE COURT: I am told they were.

23 MR. ROBBINS: I am not aware of a single court, and I
24 have done this for well over a decade, not aware of a single
25 court that found any of the other factors, particularly net

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1 shares purchased as dictating the outcome when someone else had
2 larger losses. In fact, what was just described by your Honor
3 is not the net shares. What your Honor described was the FIFO
4 calculation, that is, shares that were acquired before the
5 class period must be taken out of the equation. Regardless of
6 whether -- because many courts in this district, your Honor,
7 use LIFO -- regardless of whether LIFO or FIFO is used, the
8 losses are dramatically in favor of Philips.

9 THE COURT: Let's use the methodology going down the
10 numbers. How many shares did you purchase during the class
11 period? Mr. Levit told me 2.38 million. Is that correct?

12 MR. ROBBINS: I believe that is correct, your Honor.

13 THE COURT: He told me Oklahoma and Union bought 4.6
14 million during the class period. Is that correct?

15 MR. ROBBINS: That is correct, your Honor.

16 THE COURT: Now, net shares, he didn't define it, but
17 I assume net shares are those shares purchased during the class
18 period, the number that remained?

19 MR. ROBBINS: No, your Honor. What it is, it is the
20 total -- that's right, the total number of shares purchased.

21 THE COURT: During the class period?

22 MR. ROBBINS: Less the total number of shares sold.

23 THE COURT: Any time?

24 MR. ROBBINS: During the class period.

25 THE COURT: No. Any time?

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1 MR. ROBBINS: No.

2 THE COURT: If you get money back, then you can't sue
3 for damages on that.

4 MR. ROBBINS: The net shares calculation, your Honor,
5 includes the sale of shares during the class period reducing
6 the number of shares purchased. It is just a share
7 calculation.

8 THE COURT: Yes, but it seems to me if you buy 10
9 shares during the class period and you sell 10 shares after the
10 class period, the number of shares that you can seek damages on
11 is zero.

12 MR. ROBBINS: Well, your Honor, in that example what
13 you would be entitled to would be the 10 shares purchased
14 during the class period, whatever you paid for them, if you
15 held them to the end, the calculation of the PSLRA is the
16 average price over the 90 days after the end of the class
17 period. So you would have to credit back \$13.84, which is the
18 average against the purchase.

19 So, for example, your Honor, if you bought 10 shares
20 at \$50, that would be 500, and those 10 shares you would have
21 to reduce your claimed loss by \$134.80, 1384 times 10. So they
22 don't go to zero and they don't cancel out because you paid 50
23 and now you have something worth \$13.84.

24 THE COURT: Is that what is meant by net shares?

25 MR. ROBBINS: No. Net shares is simply this, your
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1 Honor: During the period a movant purchased a hundred thousand
2 shares total during the period. During that same period, the
3 class period, it sold 50,000 shares. Let's say some of those
4 might have been bought before, some of those might have been
5 bought during. Regardless, the net shares in that example is
6 50,000. It doesn't provide any guidance as what is the
7 financial interest in the relief sought.

8 THE COURT: I agree.

9 MR. ROBBINS: Your Honor --

10 THE COURT: I should eliminate that?

11 MR. ROBBINS: It borders on silly, your Honor.

12 The reality is this court, Union Asset Management and
13 almost every other court and litigant when they go to ascertain
14 financial interest, dollar recoveries, your Honor, use FIFO.
15 Some courts in this district use LIFO for lead plaintiff and
16 that is fine. Regardless of whether it is used, our client has
17 the largest loss.

18 THE COURT: Let's just stay with it.

19 The second criteria, the net number of shares each
20 movant purchased during the class period, so I am told that
21 Oklahoma and Union have net shares of 2.66 million and Philips
22 1.3 million. Is 1.3 million accurate for you?

23 MR. ROBBINS: It is, your Honor.

24 THE COURT: Is 2.66 accurate for them?

25 MR. ROBBINS: It is, your Honor.

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1 THE COURT: The next one becomes the total net funds
2 each movant had spent on stock purchases during the class
3 period, and how do you defined net period?

4 MR. ROBBINS: Net funds expended is the same simple
5 calculation except accounting for dollars. If someone --

6 THE COURT: You translate that 2.66 million into
7 dollars and you translate the 1.3 million into dollars.

8 MR. ROBBINS: Unfortunately, that calculation, your
9 Honor, is polluted with the pre-class period purchases which
10 are being sold during the period and being calculated into the
11 mix, which is your Honor's concern and frankly ours.

12 THE COURT: So he comes up with 52.2 million for his
13 clients, and that gives you 37.4 million for your clients?

14 MR. ROBBINS: Correct.

15 THE COURT: You agree with those numbers?

16 MR. ROBBINS: I do.

17 THE COURT: You do?

18 Then the last one is each movant's approximate loss
19 during the class period, and I think you told me that you take
20 your total investment for purchases made during the class
21 period less the value of the, average value of the shares for
22 the period of 90 days after the class period?

23 MR. ROBBINS: Sorry. Say that last portion again.

24 THE COURT: I am trying to remember what you said to
25 me. You take the total cost of purchases during the class

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1 period less the average price of shares for 90 days after the
2 period. Is that correct?

3 MR. ROBBINS: When you hold the share to the end, you
4 can't recover on that. My answer was no, that is not true.

5 What you need to do, though, is not recover the
6 entirety of what you spent. You need to reduce it by the value
7 you hold at the end because after the end of the class period,
8 the shares were still worth under the PSLRA \$13.84.

9 THE COURT: The loss during the period is the amount
10 of purchases, the cost of the purchases less the aggregate
11 value of those shares?

12 MR. ROBBINS: Correct.

13 THE COURT: On a LIFO basis, not FIFO basis?

14 MR. ROBBINS: On a LIFO basis, your Honor, we try to
15 calculate those numbers and accept the defendants' calculation,
16 but LIFO is a very confusing process. It is one that is not
17 used by this court.

18 Your Honor had the allocation of financial interest in
19 the Escalla case. When those proceeds were recovered and
20 distributed, your Honor endorsed in the plan of allocation the
21 first in, the first out FIFO method.

22 THE COURT: The problem was that was an agreed
23 disposition so I never focused on it.

24 MR. ROBBINS: Fair enough.

25 THE COURT: I can't follow it because I didn't focus
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1 on it. It wasn't really my thinking.

2 MR. ROBBINS: I can go through the calculation.

3 THE COURT: How do you figure damages, Mr. Robbins?

4 If you go to trial, how do you figure damages?

5 MR. ROBBINS: You figure damages on per share basis of
6 shares acquired during the class period, and we agree entirely
7 with your Honor that if you come in and you sell a share that
8 you bought 7 years ago, that is not relevant to the
9 calculation. You bought a share during this period and you
10 suffered a loss.

11 If you bought a share during this period for \$40 and
12 then you sold it for 38 before the end of the period, you are
13 probably not going to recover unless there was a disclosure in
14 the interim because of the Supreme Court's ruling in DURA. If
15 you held it till the end, you are entitled to recover.

16 THE COURT: If you sell, you're selling at an inflated
17 price?

18 MR. ROBBINS: Correct.

19 THE COURT: And, therefore, in order to prove damages,
20 I think you have to take the cost of the buys less the assigned
21 value for that which you didn't sell?

22 MR. ROBBINS: Correct, that is absolutely correct.

23 THE COURT: If you bought a hundred thousand shares
24 and 50,000 remain, you take the cost of buying a hundred
25 thousand less the assigned value, average cost of the 90-day

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1 period.

2 MR. ROBBINS: The proceeds from the 50 you sold, if
3 you bought and sold during the period.

4 THE COURT: That's correct.

5 MR. ROBBINS: That is what we have done in connection
6 with our initial calculation.

7 THE COURT: What do you come to?

8 MR. ROBBINS: 21,100,000 under FIFO.

9 THE COURT: For you?

10 MR. ROBBINS: For us. 19,100,000 under LIFO.

11 THE COURT: LIFO and FIFO shouldn't count now because
12 you are taking the total cost for shares in the class period
13 less the amount you received. It seems to me you take only the
14 less of the value of the shares that remain. I'll take that
15 back. I am totally confused. I don't know.16 It needs a greater study and resort to expert proofs
17 and I am not sure it is worthwhile to do that at that period of
18 time. I am using your methodology. You come out to
19 approximately \$20 million loss that Philips suffered using the
20 same methodology. What is the loss figure for them?21 MR. ROBBINS: Right here. We utilized their
22 methodology.23 THE COURT: You use a constant methodology, using your
24 methodology which produces \$20 million of loss for you.

25 What would the number be for them?

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1 MR. ROBBINS: The aggregate is 18.9 for their group
2 under FIFO, and under LIFO it is 17.4.
3 THE COURT: It is virtually the same. It is virtually
4 the same. There is no point in making distinctions.
5 MR. ROBBINS: Between the loss suffered under LIFO or
6 FIFO?
7 THE COURT: No. Between the two of you. You come out
8 to 20 million and they come out to 18 million and there is lots
9 of slippage that will be found in both, so you can't really
10 make a principled distinction between the two.
11 MR. ROBBINS: If I may give you this calculation? May
12 I approach?
13 THE COURT: Yes. Did you want to give me something,
14 too, Mr. Levit?
15 MR. LEVIT: Yes.
16 THE COURT: Another calculation.
17 (Pause)
18 MR. ROBBINS: What I tried to do, your Honor, in this
19 example is isolate one of the six sub-funds that have
20 purportedly transferred their financial interest to Union Asset
21 Management. At the proper junction whenever your Honor would
22 like to hear, I would like to address some of the Rule 23
23 issues that impede the appointment of Union Asset Management.
24 THE COURT: Go ahead and develop it.
25 MR. ROBBINS: Before we get there, may I add there is
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1 the financial calculations because they're all over the map,
2 your Honor. What happened initially is both of us moved. We
3 used the same calculations. In our view, they are the
4 appropriate calculations. Under FIFO or LIFO, we have the
5 largest financial interest by millions of dollars.

6 Then what happened, your Honor, is they put in an
7 opposition brief after seeing that they did not have the
8 financial, largest financial interest and they immediately
9 switched. We just dealt with this recently with Motley Rice in
10 another case where Judge Haines in the Middle District Of
11 Tennessee said you put your numbers in to begin with, you can't
12 switch it up in opposition. They didn't just put in one
13 alternative or two alternatives or even three, but they put in
14 four. Initially they cite to case law.

15 THE COURT: Have you used an expert?

16 MR. ROBBINS: We have someone in-house that calculates
17 these numbers, yes.

18 THE COURT: Mr. Levit, do I have any expert proof to
19 help you?

20 MR. LEVIT: Your Honor, we also have -- each of our
21 firms have in-house people who are experienced in doing this.
22 I did speak to a financial expert who believes that the best
23 way to look at this is the net share approach. I'll speak more
24 on that after Mr. Robbins.

25 THE COURT: I want to tell you where my bottom line

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1 is. There is not much to decide between the two of you,
2 between the respective clients, the two of you. You are around
3 the same values. At this point whether it is a million or two
4 million more or less is not material.

5 Both of you represent qualified class members. Both
6 of you have bought your shares on the United States Exchange,
7 so the Morrison case in the Supreme Court is not relevant.
8 Both of your clients have accomplished lawyers to come to the
9 court and both of you, I believe, will do a responsible job.

10 I've seen the Fruchter firm in operation and I have
11 seen Mr. Migliori in operation, but I have no doubt in my mind
12 that you would do equally as good. Maybe better, maybe not,
13 but equal.

14 What is there to choose? Principled basis between the
15 two of you?

16 MR. ROBBINS: Our view is using any recognized
17 methodology, never before has a court used the methodology
18 endorsed by my colleagues here. If you use --

19 THE COURT: If I use your numbers, I come out to be
20 the same. The loss during the period for them is about 18
21 million, for you it is about 20 million.

22 MR. ROBBINS: We view the difference between 21
23 million -- basically under one approach it is almost 2 million.
24 Under another, it is 1.7. We view that as meaningful.

25 THE COURT: It is 5 to 10 percent. It is not

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1 material.

2 MR. ROBBINS: Okay.

3 THE COURT: They're ahead of you in some criteria.
4 You're ahead of them in other criteria. It is not meaningful.

5 MR. ROBBINS: We respectfully disagree with the
6 meaningfulness of the distinction or difference.

7 Let me address the other element because your Honor
8 has appointed lead plaintiffs in the past. In appointing them,
9 there is a two-step process. To be a presumptively adequate
10 plaintiff, you have to have the largest loss, but you have to
11 have something else, you have to make a showing under Rule 23,
12 and that showing cannot be made by my opponents here.

13 THE COURT: Tell me why.

14 MR. ROBBINS: There are two reasons. The showing
15 requires generally an analysis of adequacy and typicality, and
16 in the context of a group, your Honor, the Third Circuit said
17 in Cendant, another showing must be made; the adequacy of the
18 group.

19 Your Honor, here we have the overlay. Your Honor
20 absolutely is correct in pointing out the Supreme Court's
21 decision in NAB is not relevant in this context, even though in
22 many other actions it is. In this one there is something new
23 and very important, the W.R. Huff decision from the Second
24 Circuit. In that decision, for the first time a Court of
25 Appeals and most importantly the Second Circuit Court of

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1 Appeals pointed out that an asset manager does not have
2 standing, Constitutional standing, Article III standing to
3 assert a claim in the context of securities fraud action.

4 It had a narrow exception in the context of an asset
5 manager and has said, your Honor, if there is a valid
6 assignment that exists, then that is the way that an asset
7 manager can possibly step into the shoes of the actual victim.

8 Here the validity and the timing of that assignment is
9 at issue. Your Honor, both Judge Pauley and Judge Buchwald
10 have rejected ex post facto assignments under W.R. Huff and
11 said no, no, we are not --

12 THE COURT: How can there be an assignment?

13 MR. ROBBINS: That is what they purport here, your
14 Honor.

15 THE COURT: The cause of action lies in the funds that
16 the asset manager manages. The benefit of the lawsuit goes to
17 those funds as well.

18 MR. ROBBINS: What they have done here, and if you
19 look at the back of the packet -- there are three I have handed
20 up to you -- there are three purported assignments they ask
21 this court to make assessments of under German law, the
22 validity of these assignments under German law, because if
23 they're not valid, there is no standing for Union Asset
24 Management because itself it lost nothing.

25 It has been assigned these claims by three different

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1 asset managers that are affiliated with it, and the viability
2 of those assignments is evidenced supposedly in these three
3 agreements.

4 THE COURT: You're telling me the plaintiff are
5 managers and not beneficiaries?

6 MR. ROBBINS: That is our understand.

7 THE COURT: Is that right?

8 MR. ROBBINS: Our understanding from the papers, your
9 Honor, there are three Asset managers, two in Germany and one
10 in Luxembourg who assigned claims they purportedly have under
11 German law to Union Asset Management, who then made this motion
12 together with Oklahoma.

13 THE COURT: Who are the assignors?

14 MR. ROBBINS: The assignors are Union Investment
15 Private Funds, Union Investment Institutional, and something
16 called Union Investment luxembourg S.A.

17 THE COURT: The assignee is not a beneficial assignee.
18 It has only got for the purpose of this lawsuit the right to
19 bring the suit and the right to give a release at most.

20 MR. ROBBINS: What it purports to do, the last
21 sentence of the agreement is promise to transfer the money back
22 to the victims of this alleged fraud.

23 THE COURT: The assignee for the purposes of
24 litigation?

25 MR. ROBBINS: Yes. You know how they support the
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1 validity of these assignments is key under the Second Circuit,
2 the validity and timing of these assignments is key to their
3 standing.

4 THE COURT: Mr. Levit, is there standing in managers?

5 MR. LEVIT: Your Honor, Mr. Narwold will handle this
6 issue.

7 MR. NARWOLD: Your Honor, I have represented the Union
8 for a number of years. This issue has come up before. It has
9 not been an issue. Let me explain exactly what the scenario
10 is.

11 The Union is currently serving as a lead plaintiff in
12 a number of cases, including another case with Oklahoma. There
13 has never been a disability as to Union in proceeding here in
14 the U.S. in a 10-B case. Let me explain exactly what the
15 situation is.

16 Union Asset Management, which is the plaintiff here,
17 is the holding company in Germany. It has underneath it a
18 series of subsidiaries which are investment management
19 companies. Those companies, in turn, have what we would refer
20 to here in the United States as mutual funds. Many of them
21 have mutual funds.

22 Under German law -- and we have provided your Honor an
23 expert affidavit from a German lawyer, German law professor who
24 was used in the Vivendi case which we were also in -- those
25 individual investors in the mutual funds are in these special

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1 funds in Germany do not have the right to bring the suit in
2 their own name. The right to bring a lawsuit resides solely in
3 the investment company.

4 Those three investment companies that --
5 THE COURT: They're in the form of a Massachusetts
6 business trust, in effect?

7 MR. NARWOLD: Very similar. The right to bring the
8 lawsuit, the right to recover on behalf of --

9 THE COURT: Made more complicated by a more
10 complicated overlay of corporate structures?

11 MR. NARWOLD: What happened here is very simple.

12 The people with the right, the three investment
13 companies, the three subsidiaries, simply assign, a simple
14 assignment, not only of litigation but assignment of the claim
15 itself to the parent company, to Union Asset Management. There
16 is no question under Huff, under the Second Circuit's decision
17 in Huff, you can do those assignments. These are not ex post
18 facto assignments. These assignments were done before we and
19 Oklahoma moved for leave in this particular case.

20 What you have -- and we have documented this with
21 expert testimony -- are three funds. Those funds have the sole
22 right under German law and Luxembourgian law to bring those
23 claims. They assigned them to their parent. The parent is
24 here.

25 THE COURT: What you have, though, is a separation
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1 between what we would analogize to as a legal ownership and
2 beneficial ownership, whereas Philips, I would suppose from
3 what Mr. Robbins is leading to, doesn't have the split and the
4 beneficial owner is the legal owner.

5 MR. NARWOLD: The issue --

6 THE COURT: They're a more typical claimant.

7 MR. NARWOLD: To that point, here the beneficial owner
8 can't bring the case. What the Second Circuit said in Huff --

9 THE COURT: In this case?

10 MR. NARWOLD: Our case today, what the Second Circuit
11 said in Huff, we're going to permit an exception where the
12 beneficial owner, the person that ultimately has been injured,
13 cannot, is not permitted the bring or they're prohibited, we're
14 going to permit the, if you will, in this case the investment
15 company to bring that claim.

16 THE COURT: There is a difference, Mr. Narwold,
17 between standing or permission to sue and typicality. I have
18 to find typicality. I would feel, subject to listening to Mr.
19 Robbins, that a claimant without the separation between record
20 and beneficial ownership is a more typical claimant than a
21 claimant with that split.

22 MR. NARWOLD: I don't think it is more typical because
23 once you determine, as Judge Holwell did in the Vivendi case,
24 that Union and the other entities are exactly in the same
25 situation, the same German entities, these mutual fund

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1 companies met the Huff exception, they are, in fact, identical
2 to whether it is Philips, whether it is Oklahoma or any other
3 investor because the issue is do you have the right to be here
4 presenting the claim. That is the only issue of typicality, do
5 we have the right to be here.

6 The only issue on a lead plaintiff motion is have we
7 made a preliminary showing, which is the language your Honor
8 used in the Elan case, that we have the right to be here.
9 Judge Holwell in his decision in Vivendi said specifically as
10 to these very entities, you have the right to be here and
11 collect on behalf of your beneficial ownership.

12 I don't think there is a typical issue. What is being
13 raised is that because there is this assignment, it somehow
14 makes it more difficult. I don't think it does. It seems to
15 me if you think about how these cases progress practically, the
16 defendants are going to take a run at whoever the lead
17 plaintiff is in this case. It doesn't matter whether it is a
18 U.S. plaintiff, whether it is a Dutch plaintiff who has never
19 appeared as the lead plaintiff before or whether it is us,
20 we're all going to get challenges. We know that is how it
21 works.

22 My point is, your Honor, with respect to Union, Union
23 has successfully navigated those challenges, it has appeared
24 before here in the U.S. as a lead plaintiff and the issue being
25 raised is really a red herring. It is simply an issue that

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1 does not exist, and the only case out there is the Huff case
2 and Judge Holwell's decision in Vivendi, and both of those
3 cases support our position.

4 I would suggest that we stand here on identical
5 footing.

6 THE COURT: Mr. Robbins.

7 MR. ROBBINS: Your Honor, the replacing the class at
8 this early stage at such risk makes little sense. They're not
9 on equal footing. The differences are substantial. Your Honor
10 pointed out my pension fund client is overseen by a twelve
11 member board of trustees. It has a general counsel. It hasn't
12 transferred claims around. When you look at these purported
13 assignments, they raise additional issues.

14 If you look at these assignments, and they're almost
15 identical, all three of them, it is interesting, they say, and
16 I will quote:

17 "On behalf of the UIP, we therefore execute and submit
18 this declaration ratifying the actions of Union Asset
19 Management Holding AG and taking legal action and moving for
20 lead plaintiff on behalf of UIP's funds on 12 July 2010."

21 The language is a little bit odd. They're ratifying
22 something that hasn't happened yet because these were
23 supposedly signed on July 9th. These were executed three days
24 before. There is something, and maybe it is a lack of care,
25 your Honor. I haven't seen the originals. Maybe these are

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1 stamped by administrative people. They purport to be the
2 general counsel.

3 If you look at these assignments, the first one says
4 it was executed in Frankfurt on July 9th. The second one says
5 it was executed by the same people in Frankfurt on July 9th.
6 And the third one, your Honor, on the same day says it was
7 executed by the same people in Luxembourg. These kinds of
8 things, again I am not familiar with the intricacies of German
9 or Luxembourgian law, but the overlay here is troubling.

10 They haven't even addressed whether these assignments
11 are purportedly valid under Luxembourgian law. They don't have
12 an affidavit, a case, no citation to support the validity of
13 the assignments. The validity of the assignments, the class
14 will stand and fall if they're subject to attacks. It is a
15 virtually certainty the defendants are going to exploit that.

16 We think it raises issues that are not necessary for
17 the class to be burdened by, and then if you go through the
18 declaration because they cite no cases --

19 THE COURT: In evaluating typicality, is it a range or
20 is it an absolute?

21 In other words, is it a question are you typical or
22 not or is the question who is more typical?

23 MR. ROBBINS: Your Honor, we believe that the
24 appellate courts that have addressed this say that you should
25 look at plaintiffs in a sequential manner; that is, financial

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1 interest and typicality and adequacy conventionally. It is not
2 a weighing of one plaintiff versus another, but it is
3 determining who claims the largest financial interest, and
4 Cendant directed us, as did Cavanaugh, to say look at
5 typicality and adequacy of that plaintiff as opposed to
6 weighing one against the other.

7 Our position is if they did have the largest financial
8 interest, which they clearly don't under any recognized rubric,
9 and even if they did, the Rule 23 issues would preclude their
10 appointment anyway.

11 There is another one, your Honor. There is the res
12 judicata issue. In the affidavit they also talk about the fact
13 that a German court will recognize the validity of this court's
14 judgment. They say that. They cite no case law for it. They
15 say an expert says it. That is an issue that will also burden
16 this class.

17 THE COURT: You have the same issue in your country.
18 You're Dutch, right?

19 MR. ROBBINS: That's correct, your Honor, my client is
20 Dutch.

21 THE COURT: We have a Dutch entity contesting for lead
22 versus what, a German and Luxembourgian?

23 MR. ROBBINS: Luxembourgian interest is transferred to
24 the German. We are looking at the decisions of Judge Holwell
25 and Marrero on this issue. If I may bother the court, it is

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1 Judge Marrero who said the following:

2 "English and Dutch courts more likely than not
3 recognize and give preclusive effect to any judgment rendered
4 by this court, period."

5 That is 253 F.R.D. --

6 THE COURT: More likely than not?

7 MR. ROBBINS: 266, at 282, more likely than not, which
8 is the test for establishing typicality. Judge Holwell --

9 THE COURT: What is the other side of the comparison?
10 What is he comparing it to?

11 MR. ROBBINS: He is saying looking at the evidence
12 presented to him including a Court of Appeals case from
13 Amsterdam, he said it is clear to him it is more probable than
14 not a Dutch court would give preclusive effect to a judgment,
15 would recognize a judgment.

16 THE COURT: Would the Luxembourgian court do the same
17 thing?

18 MR. ROBBINS: In fact, courts in this district have
19 held multiple times that as to a German court, they would not.
20 Judge Stanton in the Galaxo SmithKline case --

21 THE COURT: Why not?

22 MR. ROBBINS: He said it would be improvident to
23 certify a class of German purchasers because there is no
24 indication that a German court would give effect to this
25 court's judgment.

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1 Judge Holwell in Vivendi did the same thing, he
2 rejected --

3 THE COURT: I find it difficult to hold one European
4 country would and another European country would not.

5 MR. ROBBINS: Judge Holwell said the formalities of
6 German law may well preclude the recognition of a judgment,
7 recognition of a judgment in the instant case. In fact,
8 outside this district which is less important, but Judge
9 Katherine Blake, in the Royal Ahold case, rejected Union as a
10 lead plaintiff for that very reason.

11 THE COURT: What is the composition of the funds you
12 represent? You're retirement funds?

13 MR. ROBBINS: One fund, your Honor.

14 THE COURT: One retirement fund?

15 MR. ROBBINS: Yes.

16 THE COURT: Where are the employees?

17 MR. ROBBINS: In Holland. They're employees of the
18 Philips electronics entity. It is a --

19 THE COURT: How about you, Mr. Levit?

20 MR. LEVIT: We are a U.S.-based fund in Oklahoma,
21 firefighters in the State of Oklahoma.

22 THE COURT: What about you?

23 MR. NARWOLD: Your Honor, we have a very diverse
24 group. We have six different investment funds both in
25 Luxembourg and Germany that will have both public, private and

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1 personal interests represented through the entity.

2 I do want to speak on this res judicata issue because
3 if the other issue was a --

4 THE COURT: I am not going to make a finding on the
5 basis of which country is more likely to accept our judgment
6 and which are not. I think they're equal.

7 I tell you, folks, the only thing that commends itself
8 to me for the purpose of making a choice is my belief that a
9 plaintiff that does not have a division between ownership and
10 beneficial interest is a more typical claimant than an entity
11 that does have such a distinction. I see that as the only
12 point of principled difference between the contestants for
13 being the lead. On that basis, I would hold that Philips makes
14 the better claim to be lead plaintiff.

15 Where do we go from here?

16 MR. ROBBINS: Your Honor, we would like to lay out a
17 schedule with the defendants to file an amended complaint and
18 proceed with what I would assume would be their motion to try
19 to dismiss the case under 12 (b)(6) or an answer if they're
20 willing to answer.

21 MR. LEVIT: Can we say anything further on this topic,
22 on the lead topic?

23 THE COURT: Yes, sure. You're firm is in San Diego,
24 right?

25 MR. ROBBINS: And New York. Mr. Rosenfeld is here in
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1 New York.

2 THE COURT: Your firm has offices in both places?

3 MR. ROBBINS: Yes, your Honor.

4 THE COURT: Does Pfizer have anything to tell me on
5 this?

6 MR. SHAFTEL: Your Honor, for the purposes of today's
7 instant motion practice, we're respectfully on the sideline in
8 terms of invitation to set up a briefing schedule.

9 THE COURT: Are you planning any motions to dismiss?

10 MR. SHAFTEL: We would expect.

11 THE COURT: What kind of motions to dismiss?

12 MR. SHAFTEL: Going to sufficiency of the pleading.

13 THE COURT: Forgetting about the sufficiency. One
14 lawyer is going to be able to plead as well as another. What
15 about substantive motions?

16 MR. SHAFTEL: Your Honor, we don't believe there has
17 been pled any extant complaint or there can be actionable
18 statements.

19 THE COURT: Why not?

20 MR. SHAFTEL: The accuracy of the disclosures I don't
21 believe can be questioned. There is no --

22 THE COURT: That is the same for both, right?

23 MR. SHAFTEL: Correct, your Honor.

24 THE COURT: Is there any motion that you make that
25 focuses on the character of the plaintiff, or nature of the
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1 plaintiff is what I mean?

2 MR. SHAFTEL: Your Honor, we have not had the
3 opportunity to test the class certification factors. Sitting
4 here today, I am not drawing any distinction between --

5 THE COURT: You don't know of anything today that
6 would cause me to take into consideration who might be a better
7 candidate to pass a motion?

8 MR. SHAFTEL: Your Honor, certainly sitting or
9 standing here today, I am not aware of any distinction.

10 THE COURT: So we have each one of these contestants
11 who represents I think primarily foreign interests or shares in
12 an American company on an American exchange. That seems to be
13 the case, right, Mr. Shaftel?

14 MR. SHAFTEL: Correct, your Honor.

15 THE COURT: Mr. Levit?

16 MR. LEVIT: Yes, your Honor. May I just say something
17 a little further on the lead plaintiff?

18 THE COURT: Yes, you may.

19 MR. LEVIT: We didn't really get to address the
20 adequacy point. I think what your Honor stated previously is
21 correct, you are adequate or you're not, and Union has shown
22 that it is adequate. Just because there is this division that
23 has been discussed today doesn't make it an inadequate
24 plaintiff or inadequate representative.

25 At this stage of the proceeding it has made a

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1 sufficient showing that it would be adequate. That is all that
2 is required right now and there is nothing to indicate that it
3 wouldn't be even with that division.

4 THE COURT: In evaluating lead plaintiff, in addition
5 to the four factors that we mentioned before, I look to the
6 overall issue, which plaintiff is more characteristic of all
7 the people in the class and which has an interest that is more
8 aligned with all the people in the class.

9 By favoring a plaintiff that does not have a division
10 between who benefits from a recovery and who manages a
11 recovery, I think I'm deciding in favor of an entity that is
12 more like the other members of the class. That is the basis of
13 my ruling. That is the only basis for difference that I see
14 that amounts to anything.

15 Otherwise, I think you're all the same.

16 MR. NARWOLD: Your Honor, let me think about that for
17 a second. This was not raised in the briefing, this issue of
18 legal --

19 THE COURT: I realize that.

20 MR. NARWOLD: It maybe it is useful for us on a short
21 basis to brief this.

22 THE COURT: No, I don't think so. Look, you're very
23 much alike. You lost around the same amount of money, your
24 investment is about the same. I know your firm. I know Mr.
25 Levit's firm. I have seen Mr. Levit, Mr. Levit's firm in

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1 action in a number of these kinds of cases. I know they do a
2 very good job. I know your firm does a good job. I have seen
3 the products of his creativity and persistence for the benefit
4 of clients and I have a great deal of admiration for both your
5 firms.

6 I don't know, I don't know Mr. Robbins' firm, but he
7 is a very fine lawyer and I suspect that his firm has a very
8 fine set of lawyers. This is not graven in stone. If I find
9 Mr. Robbins is not doing a good job or is wasting money and
10 there needs to be some adjustment, I have the power to do it
11 and I will do it. Whoever is going to be the lead is going to
12 be having to live up to stringent standards. I want economy in
13 this lawsuit. I am not going to give a fee based on any
14 percentage, any magical theory. I will look at your work and
15 make sure you have delegated down sufficiently to people who
16 don't charge the highest kinds of rates.

17 I'll look at what you do with an eye of conserving
18 money for the class and see where the best recovery is. I
19 don't have any other basis to do what I did now, and I have
20 made my ruling.

21 MR. NARWOLD: Your Honor, the point I was going to
22 make on this distinction issue, I am not sure there is one and
23 for this reason: The Dutch pension fund, the pension fund here
24 is acting on behalf of its employees. The employees are the
25 beneficiaries. I don't know under Dutch law whether the

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1 pension fund is a title holder and the beneficiaries, that is,
2 the employees, are the beneficial ownership whether they're
3 making a contribution. We don't know any of those issues.

4 THE COURT: I don't know what the issues are and I
5 don't know that it is different in the Union and Oklahoma fund.

6 MR. NARWOLD: I don't, either. My suggestion is we
7 don't know that and so we're being --

8 THE COURT: Oklahoma is presumably a fund for
9 firefighters?

10 MR. NARWOLD: The distinction your Honor is making may
11 exist for all three of us. We don't have a record that allows
12 us to make that decision today.

13 THE COURT: Well, if you find out I need to make some
14 kind of adjustment, you let me know.

15 MR. LEVIT: I would like to point out, your Honor,
16 Oklahoma is a U.S.-based fund and it doesn't have any of these
17 issues that either Union or Philips has. Certainly going back,
18 I know we have discussed this a long time ago, going back to
19 the lax factors, they --

20 THE COURT: Standing alone, you are not equal.

21 MR. LEVIT: That's correct, standing alone, we are
22 not. Going back to the lax factors, which is the first thing
23 that courts --

24 THE COURT: Is there any case that favors an American
25 entity over a European entity?

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1 MR. NARWOLD: Well, the AMEX case Judge Pauley decided
2 last year, and I was on the short end of that so I know it.
3 The judge said because we've got foreign plaintiffs here, U.S.
4 plaintiffs and foreign plaintiffs competing for lead, whatever
5 those issues are that foreign plaintiffs have, I can avoid them
6 altogether by appointing a U.S. plaintiff and that is what I
7 think he did.

8 THE COURT: I made my ruling. Thanks very much.
9 Before I let you go, would it be inefficient for you,
10 Mr. Robbins, to incorporate in your litigating group some of
11 the lawyers in Mr. Narwold's firm and Mr. Levit's firm?

12 MR. ROBBINS: We can try that, your Honor. We are
13 very sensitive to this court's sensitivity toward excess
14 expenditure and waste and we can try to avoid being duplicative
15 and use their assistance at appropriate junctures.

16 THE COURT: Your personal office is in San Diego?

17 MR. ROBBINS: Yes.

18 THE COURT: You will be lead, right?

19 MR. ROBBINS: Me and Sam Melvin, and we have an
20 office --

21 THE COURT: Your operations are in San Diego?

22 MR. ROBBINS: Yes.

23 THE COURT: Mr. Levit's in New York?

24 MR. ROBBINS: We have 20 lawyers in New York.

25 THE COURT: Mr. Narwold, your principal operations are
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1 in is Hartford?

2 MR. NARWOLD: Yes.

3 THE COURT: You could effect efficiencies by working
4 together.

5 MR. ROBBINS: We would be glad to look to them.

6 THE COURT: I don't want you to just add unnecessary
7 expense, but I think you can provide efficiencies that would
8 help the case and would short-circuit problems amongst the
9 three of you.

10 MR. ROBBINS: I would be glad to reach out to my
11 client. I can't do it tonight and ask them to consider the
12 court's request and incorporate these gentlemen and their law
13 firms.

14 THE COURT: Does that make sense, Mr. Levit?

15 MR. LEVIT: Yes, I believe it does, your Honor.

16 THE COURT: Mr. Narwold?

17 MR. NARWOLD: Yes, your Honor.

18 THE COURT: There is not going to be duplication.

19 MR. NARWOLD: No, your Honor. Our firms work together
20 on a regular basis. I don't think we have a problem.

21 THE COURT: All right. You should try to do that.
22 What is the next step, to amend the complaint?

23 MR. ROBBINS: As lead counsel, your Honor, we would
24 talk with our colleagues, we would formulate and finalize and
25 file a complaint within the next 45 days.

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1 THE COURT: My experience is all this does is create a
2 book where there is now a thick sheath of papers, which I don't
3 think we want.

4 MR. ROBBINS: I don't blame your Honor especially when
5 the defendant has paid 2.3 billion including over a billion in
6 criminal fines.

7 THE COURT: Mr. Robbins, I don't need that now.

8 MR. ROBBINS: We --

9 THE COURT: I don't want that sort of thing.

10 MR. ROBBINS: Okay.

11 THE COURT: If it is relevant, you will tell me. It
12 is not relevant now, so don't tell me.

13 MR. ROBBINS: We hope they could answer the complaint.
14 That is the short response.

15 THE COURT: Of course they can answer the complaint.
16 I don't need a tone. I need a complaint, not a brief, a
17 complaint. I don't think you need 45 days. I think a month is
18 enough. Then another 30 days to answer or make motions. In
19 other words, I don't want extensions, all right? You present
20 me with a stipulation, will you --

21 MR. ROBBINS: Yes, your Honor.

22 THE COURT: -- that lays this out.

23 MR. ROBBINS: We will.

24 THE COURT: All right. So your complaint will be due
25 a certain date 30 days hence and an answer or motions will be

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1 due 30 days after that.

2 MR. SHAFTEL: That is obviously fine, your Honor, if
3 that is what the court --

4 THE COURT: No adjournments.

5 MR. SHAFTEL: There is a stipulation on file with the
6 court which is so ordered by the court which anticipates where
7 we are today and does provide I believe for a 45-day window and
8 45-day window, your Honor.

9 THE COURT: Write another stipulation that voids that
10 one and does what I say here, okay?

11 MR. ROBBINS: Yes.

12 THE COURT: Then we are going to move this forward.
13 (Court adjourned)

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