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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
MARY K. JONES, Individually and on Behalf	:
of All Others Similarly Situated,	:
	:
Plaintiff,	:
	:
-against-	:
	:
PFIZER INC., HENRY A. McKINNELL,	:
JEFFREY B. KINDLER, FRANK	:
D'AMELIO, DAVID L. SHEDLARZ, ALAN	:
G. LEVIN and IAN C. READ,	:
	:
Defendants.	:
	:
-----	X

Civil Action No. 10-cv-03864-AKH

JUDGE ALVIN K. HELLERSTEIN

ECF Case

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF
OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM
AND UNION ASSET MANAGEMENT HOLDING AG FOR RECONSIDERATION
OF APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL**

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I. INTRODUCTION

Oklahoma Firefighters Pension and Retirement System (“Oklahoma Firefighters”) and Union Asset Management Holding AG (“Union”) respectfully submit this memorandum of law in support of their motion for reconsideration of the appointment of lead plaintiff and lead counsel in the above captioned action. This Motion is brought pursuant to Local Rule 6.3, on the basis that the Court determined that the Oklahoma Firefighters and Union shared the greatest financial interest in the relief sought by the class, and thus are entitled to (at least share) the presumption of the most adequate plaintiff. See Hr’g. Tr. at 20:3-4 (movants’ financial interests are “virtually the same”); Id. at 22:19-23:4 (“They’re ahead of you in some criteria. You’re ahead of them in other criteria. [The difference] is not meaningful.”).¹ Oklahoma Firefighters and Union also satisfy the requirements of Federal Rule of Civil Procedure No. 23 (“Rule 23”) because they are typical and adequate, and therefore are entitled to appointment as Lead (or Co-Lead) Plaintiff alongside Stichting Philips Pensioenfonds, and their choice of counsel to appointment as Lead or Co-Lead Counsel alongside Stichting Philips Pensioenfonds’ counsel. Moreover, appointing Oklahoma Firefighters and Union as Co-Lead Plaintiff will result in no additional costs or delays. Accordingly, this Motion should be granted to “correct a clear error.” See In re Initial Pub. Offering Sec. Litig., No. 21 MC 92 (SAS), 2010 WL 2605233, at *1 (S.D.N.Y. June 28, 2010); see also Hr’g. Tr. at 40:13-14 (Court: “If you find out I need to make some kind of adjustment, you let me know.”).²

¹ Transcript of Hearing on Lead Plaintiff Motions, November 3, 2010, before the Honorable Alvin K. Hellerstein (herein, “Hr’g. Tr.”).

² In declining to appoint Oklahoma Firefighters and Union as Lead Plaintiff (or Co-Lead Plaintiff with Stichting Philips Pensioenfonds (“Philips”)), the Court’s sole basis was that Philips was “more typical.” Hr’g. Tr. at 35:7-14.

II. ARGUMENT

A. Oklahoma Firefighters And Union Are Entitled To Share The Presumption Of Most Adequate Plaintiff

After considering the proposed methods of calculating financial interest, the Court determined that the financial interests of the two movants are “virtually the same,” and that there is “no point in making distinctions” because the difference between the movants “is not material” and “not meaningful.” Hr’g. Tr. at 20:3-4; 22:19-23:4. Thus, Oklahoma Firefighters and Union share the “largest financial interest” in the relief sought by the class, and are entitled to (at least share) the presumption of “most adequate plaintiff.” 15 U.S.C. §78u-4(a)(3)(B)(i), (iii).

The Private Securities Litigation Reform Act of 1995 (“PSLRA”) sets forth a simple and straightforward process to identify the lead plaintiff: Once the Court determines the movant with the largest financial interest, that movant is entitled to the presumption of “most adequate plaintiff” and the Court must appoint that movant as lead unless the Court is presented with proof that the movant does not satisfy Rule 23. See 15 U.S.C. §78u-4(a)(3)(B)(iii)(II); In re Cavanaugh, 306 F.3d 729, 732 (9th Cir. 2002); see also, e.g., In re Tronox, Inc., Sec. Litig., 262 F.R.D. 338, 347 (S.D.N.Y. 2009) (“[A]s set forth in the PSLRA, it is [a movant’s] burden to submit proof that [a competing movant] is an atypical investor”) (emphasis added).

B. Oklahoma Firefighters And Union Are Typical And Adequate

When assessing whether a movant is typical and adequate, the court must make an absolute determination, not a relative one. It is a question of “are you typical or not,” rather than “who is more typical.” See Hr’g. Tr. at 31:19-22. Counsel for Philips agreed:

Your Honor, we believe that the appellate courts that have addressed this say that you should look at the plaintiffs in a sequential matter; that is financial interest and typicality and adequacy conventionally. It is not a weighing of one plaintiff versus another, but it is determining who claims to have the largest financial

interest, and Cendant directed us, as did Cavanaugh, to say look at typicality and adequacy of the plaintiff as opposed to weighing one against the other.

Id. at 31:23-32:6 (emphasis added); see also Cavanaugh, 306 F.3d at 732 (“That the district court believes another plaintiff may be “more typical” or “more adequate” is of no consequence. So long as the plaintiff with the largest losses satisfies the typicality and adequacy requirement, he is entitled to lead plaintiff status”) (emphasis added); In re Cendant Corp. Litig., 264 F.3d 201, 268 (3d Cir. 2001) (“Once the [most adequate plaintiff] presumption is triggered, the question is not whether another movant might do a better job . . . instead, the question is whether anyone can prove that the presumptive lead plaintiff will not do a ‘fair[] and adequate[]’ job. We . . . stress that the inquiry is not a relative one.”) (emphasis in original).³

Oklahoma Firefighters and Union are indeed “typical” of other class members, because their claims and defenses are similar to those of other class members. See, e.g., Denny v. Deutsche Bank AG, 443 F.3d 253, 267 (2d Cir. 2006). Philips has submitted no proof to the contrary. The fact that Union was granted an assignment of claims from three of its own subsidiaries does not support, let alone serve as “proof,” that Union is atypical. See Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, 502 F.3d 91, 103 (2d Cir. 2007) (refusing to preclude assignees from serving as class representatives on the basis of assignments); see also Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc., No. 05cv1199-IEG-CAB, 2009 WL 249888, at *4 (S.D. Cal. Feb. 2, 2009) (“[a]llowing assignees to

³ An overwhelming number of courts in this District have affirmed that the relative adequacy and typicality of movants is of no consequence in determining the lead plaintiff. See, e.g., Sofran v. LaBranche & Co., 220 F.R.D. 398, 402 (S.D.N.Y.) (quoting Cavanaugh); Jolly Roger Offshore Fund v. BKF Capital Group, No. 07 Civ. 3923 (RWS), 2007 U.S. Dist. LEXIS 60437, at *8-9 (S.D.N.Y. Aug. 14, 2007) (citing Cavanaugh and Cendant); Rozenboom v. Van Der Moolen Holding, N.V., No. 03 Civ. 8284 (RWS), 2004 U.S. Dist. LEXIS 6382, at *9-10 (S.D.N.Y. Apr. 14, 2004) (citing Cavanaugh and Cendant); Vladimir v. Bioenvision, Inc., No. 07 Civ. 6416 (SHS), 2007 U.S. Dist. LEXIS 93470, at *21-22 (S.D.N.Y. Dec. 21, 2007) (citing Cavanaugh); Pirelli Armstrong Tire Corp. Ret. Med. Benefits Trust v. LaBranche & Co., 229 F.R.D. 395, 411-12 (S.D.N.Y. 2004) (citing Cavanaugh and Cendant).

act as class representatives does not undermine the purpose of class action litigation and has no impact on the economy or efficiency of the suit”).

C. Oklahoma Firefighters And Union Are Entitled To Be Appointed Lead Or Co-Lead Plaintiff

As the Court determined, the competing movants in this action are essentially the “same.” Hr’g. Tr. at 38:15. Without a distinction between movants based on financial interest, Oklahoma Firefighters and Union are equally entitled to (at least share) the presumption of most adequate plaintiff. And, since Oklahoma Firefighters and Union are both typical and adequate, and otherwise satisfy the requirements of Rule 23, they are entitled to be appointed as Lead or Co-Lead Plaintiff with Philips. Compare Dolan v. Axis Capital Holdings Ltd., No. 04 Civ. 8564(RJH), 2005 WL 883008, at *5 (S.D.N.Y. Apr. 13, 2005) (“Having reviewed the record, the Court is unable to find a principled reason to choose one [movant] over the other. Thus, . . . the Court will appoint [both movants] as co-lead plaintiffs.”) with Hr’g. Tr. at 22:14-15 (“[w]hat is there to choose? Principled basis between the two of you?”) and Id. at 20:9-10 (“[y]ou can’t really make a principled distinction between the two”).

It is well within the Court’s discretion to appoint competing movants as co-lead plaintiffs. See Axis Capital, 2005 WL 883008, at *5 (collecting cases); see also, e.g., Pirelli Armstrong Tire, 229 F.R.D. at 419 (“courts have determined that the interests of a proposed class may be served best by the appointment of co-lead plaintiffs or multiple lead plaintiffs who did not move initially as a group”); In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 49 (S.D.N.Y. 1998) (appointing three competing lead plaintiff movants as co-lead plaintiffs).

Moreover, appointing Oklahoma Firefighters as a co-lead plaintiff would better protect the class from attacks anticipated in Defendants’ opposition to class certification. See Hr’g. Tr.

at 32:11-18; 34:3-4; see also Baydale v. Am. Express Co., No. 09 Civ. 3016(WHP), 2009 WL 2603140, at *3 (S.D.N.Y. Aug. 14, 2009) (appointing domestic lead plaintiff movant).

D. There Will Be No Delay In Schedule Or Increased Costs If Oklahoma Firefighters And Union Are Appointed Lead Or Co-Lead Plaintiffs

If Oklahoma Firefighters and Union are appointed Lead or Co-Lead Plaintiffs, there will be no negative effect on the case management schedule already established by the Court, or on the total fees requested or cost to the class. Oklahoma Firefighters and Union's choice of counsel regularly works with counsel for Philips, and will be able to work efficiently and without needless expenses or duplication of efforts. Indeed, whichever firm serves as Lead Counsel will be held to "stringent standards" and must bring "economy" to this action. Hr'g. Tr. at 39:12-13. The Court is familiar with the law firms of Abraham, Fruchter & Twersky, LLP and Motley Rice LLC, counsel for Oklahoma Firefighters and Union, and has acknowledged that they would "provide efficiencies that would help the case and would short-circuit problems" and would otherwise do a good job for the class. Id. at 42:6-9; 38:22-39:5. Moreover, the on-going efforts of current Lead Counsel Robbins Geller Rudman & Dowd LLP will not be undermined by adding co-lead counsel at this time because the results of those efforts would be retained.

III. CONCLUSION

For all of the above reasons, Oklahoma Firefighters and Union respectfully request that the Court reconsider the appointment of Lead Plaintiff in the this action and appoint Oklahoma Firefighters and Union alongside Philips as Lead or Co-Lead Plaintiffs and appoint Motley Rice LLC and Abraham, Fruchter & Twersky, LLP as Lead or Co-Lead Counsel alongside Robbins Gellar Rudman & Dowd LLP.

Respectfully submitted November 8, 2010.

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