
Hughes Hubbard & Reed

Win for PwC in Multidistrict Litigation

News & Events

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In a long-awaited decision in the Refco multidistrict litigation, U.S. District Judge Jed S. Rakoff recently granted a motion by client PricewaterhouseCoopers Cayman Islands to dismiss all claims against it.

The case related to PwC Cayman's work on behalf of the SPhinX Funds, a group of Cayman Islands funds. The daily operations of the SPhinX Funds were conducted by their investment manager, PlusFunds. Pursuant to a series of engagement letters negotiated by PlusFunds, PwC Cayman issued audit reports on the financial statements of three of the SPhinX Funds. Each engagement letter contained a forum selection clause providing that all claims that arose out of or in connection with the engagement letters had to be brought in the Cayman Islands.

The complaint alleged that certain SPhinX and PlusFunds agents allowed excess cash belonging to SPhinX to be "diverted" from segregated customer accounts to non-segregated accounts at a Refco affiliate. Prior to Refco's bankruptcy in October 2005, the cash belonging to SPhinX was returned by Refco. Refco's creditors subsequently brought a preference action, and SPhinX returned \$263 million to the Refco estate as part of the settlement of that action. The complaint alleged that the return of that money led to the liquidation of the SPhinX Funds and the bankruptcy of PlusFunds. The liquidators of the SPhinX Funds and the PlusFunds Trustee brought an action against various third parties, including PwC Cayman, seeking at least \$263 million for the SPhinX Funds and hundreds of millions more on behalf of PlusFunds.

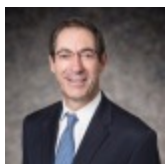
In an effort to obtain a speedy dismissal before the need for extensive motion practice or costly discovery, Hughes Hubbard filed an early motion to dismiss the claims against PwC Cayman due to the mandatory forum selection clause in the engagement letters. The plaintiffs opposed the motion, arguing that litigating against PwC Cayman in the Cayman Islands while the remainder of the action proceeded in New York would be inefficient and inconvenient and that there was no basis to bind PlusFunds to the forum selection clause. Because of a large backlog, Judge Rakoff appointed two Special Masters to assist him in resolving the outstanding motions in the MDL. Judge Rakoff referred PwC Cayman's motion to Special Master Ronald Hedges, who, after hearing argument by David Wiltenburg, issued a report and recommendation fully adopting Hughes Hubbard's position and

recommending that the claims against PwC Cayman be dismissed.

The plaintiffs objected to the Special Master's decision and asked Judge Rakoff to overturn it. David Wiltenburg again argued on behalf of PwC Cayman, and, within a week of the oral argument, Judge Rakoff issued a decision fully adopting the Special Master's recommendation and dismissing all claims against PwC Cayman.

Bill Maguire, David Wiltenburg, and Gabrielle Marshall represented PwC Cayman.

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William R. Maguire



David Wiltenburg

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