



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MF GLOBAL HOLDINGS LTD., as Plan Administrator,

Plaintiff,

- against -

PRICEWATERHOUSECOOPERS LLP,

Defendant.
-----X

14-cv-2197

DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

This action, in which plaintiff MF Global Holdings, Ltd. ("MF Global"), as Plan Administrator (the "Plan Administrator") asserts malpractice claims against defendant PricewaterhouseCoopers LLP ("PwC"), was filed almost exactly three years ago and is currently being tried before a jury in this Court. PwC now moves to bar the Plan Administrator from asserting what PwC contends is a new theory of causation. ("Motion," Dkt. No. 193.) PwC's Motion was filed in the late evening of March 12, 2017, a week after the commencement of trial on March 6, 2017. For the reasons stated below, PwC's Motion is denied.

PwC argues that the Plan Administrator for the last three years has alleged that MF Global's bankruptcy was caused by the company's strategy of investing in Euro repurchase-to-maturity transactions ("RTMs") to finance its investment in European sovereign debt, a strategy the Plan Administrator

claimed MF Global would not have undertaken but for PwC's advice that such transactions could properly be accounted for as sales off MF Global's balance sheet. (See "PwC Mem.," Dkt. No. 194.) At trial, PwC argues, the Plan Administrator has abandoned that theory and instead alleges that MF Global's collapse was caused by confusion about and a lack of trust in MF Global's financial statements, which in turn the Plan Administrator alleges was caused by PwC's negligent advice. (See id.) PwC therefore asks the Court to (1) preclude the Plan Administrator from presenting evidence or argument in support of its new causation theory and strike any evidence or argument already in the record; and (2) instruct the jury that the Plan Administrator must prove its original theory of causation to prevail on its claims. (See id. at 4, 21.) In the alternative, PwC requests that the Court declare a mistrial. (See id.)

The Plan Administrator opposes PwC's Motion and argues that (1) the theory of causation PwC contends is new in fact has been disclosed at various points in this litigation; (2) PwC's Motion is untimely and PwC therefore waived any objection to the Plan Administrator's argument; and (3) PwC is not entitled to its requested relief under relevant case law. ("PA Opp.," Dkt. No. 197.) The Court granted PwC leave

to file a reply, which it did in the afternoon of March 14, 2017. (See "PwC Reply," Dkt. No. 195.)

Although the Plan Administrator's allegations in this case include the statement that "MF Global Holdings' decision to invest heavily in European sovereign debt through Euro RTM transactions was dependent on PwC's approval of accounting for the Euro RTM transactions as sales" ("Complaint," Dkt. No. 2, at ¶ 4), whether the Plan Administrator has sought to prove that theory up to this stage of the trial is not relevant. Instead, the issue before the Court is whether the Plan Administrator's evidence of causation at trial comes as a surprise to and therefore prejudices PwC's ability to present a defense. See, e.g., Aldridge v. Forest River, Inc., 635 F.3d 870, 873 (7th Cir. 2011) (affirming district court's exclusion of a new theory of liability on the ground that "defendants would not have time to prepare a meaningful defense at the late stage in these proceedings"); Hutter v. Countrywide Bank, N.A., 41 F. Supp. 3d 363, 379 (S.D.N.Y. 2014) (denying leave to amend to assert consequential damages because doing so "at this stage in the litigation would prejudice Defendants").

PwC had sufficient notice prior to the time it filed this Motion to conclude that the Plan Administrator alleges that PwC's advice caused a crisis of confidence in MF Global's

financial statements; that theory was previously disclosed in this litigation. Examples of such allegations are outlined in the Plan Administrator's opposition. (See PA Opp. at 3-14.) The Court will address only a few instances here.

In its Complaint, the Plan Administrator alleged that, but for PwC's alleged negligent advice regarding Euro RTMs and the DTA:

MF Global Holdings would not have been in the precarious financial position in which it found itself on October 25, 2011, and would not have incurred the substantial damages it suffered. In reliance on PwC's negligent audit, quarterly reviews, and accounting advice, MF Global Holdings was placed in the position of taking major hits to its liquidity, capital, and financial position at a time and in a manner that exacerbated the negative effects on the Company in the marketplace when it could least afford it.

(Complaint ¶ 136.) Similarly, in its opening statement, the Plan Administrator stated that "PwC's audit failures came to light in October of 2011, and MF Global's true financial position became known, the parties on whom MF Global relied lost confidence in the company's financial position, sparking a cash crisis that rapidly resulted in one of the largest financial collapses in American history." (March 7, 2017 Trial Tr. at 16:1-6.)

Although PwC may well be surprised that some of the prior allegations in the case may differ from theory of causation the Plan Administrator has advanced up to this point at trial,

because that theory has been disclosed before, PwC cannot at this late stage claim to be prejudiced. The trial was scheduled to last as much as five weeks. PwC's Motion was filed after the first week and following the testimony of only one MF Global executive. The weeks remaining should afford PwC sufficient time to respond to any shift it perceives in the Plan Administrator's theory.

I. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion of defendant PricewaterhouseCoopers LLP to bar the theory of causation that plaintiff MF Global Holdings Ltd., as Plan Administrator, has advanced at trial of this action (Dkt. No. 193) is **DENIED**.

SO ORDERED.

Dated: New York, New York
15 March 2017



VICTOR MARRERO
U.S.D.J.