UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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GEOFFREY VARGA, et al.,

Plaintiffs,

v. 09 CV 4936 (AKH)

DELOITTE & TOUCHE, LLP,

Defendants.

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New York, N.Y.
January 5, 2011
11:11 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

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(In open court)

THE COURT: First of all, who is the author of this 610-paragraph, 230-page complaint?

MR. ALLEN: Your Honor, the complaint was authored by our firm.

THE COURT: Who steps up?

MR. ALLEN: I'm Tom Allen and we represent the Varga plaintiffs and our firm prepared the complaint.

THE COURT: Do you know the difference between a complaint and a brief?

MR. ALLEN: I do know the difference between a complaint and a brief, your Honor.

THE COURT: Do you believe that a judge with 12,000 cases on his docket has the time to read 610 paragraphs and 230 pages of a complaint?

MR. ALLEN: I appreciate that, your Honor. Under particularly the current pleading rules, it's necessary for us to allege allegations with specificity, in fact, as you know, with some specificity, even though they're not subject to Rule 9. And in order to deal with what we anticipated would be motions to dismiss on different topics, which is what has happened, we felt that it was necessary.

THE COURT: That's not where the prolixity is. The prolixity is allegations of meaningless details, arguments, and various other kinds of criticisms that don't belong in a

complaint. Rule 9, Iqbal, the scienter rules do not abrogate Rule 8. Rule 8 requires a short and plain statement of the complaint. This is the worst complaint I've seen. Thank you.

Who's making the motion?

MR. RAFFERTY: Your Honor, Tom Rafferty on behalf of Deloitte U.S.

THE COURT: You may argue, Mr. Rafferty.

MR. RAFFERTY: Thank you, your Honor.

Your Honor, this is the fourth time these plaintiffs have tried to plead a complaint setting forth the negligence count in Count One; and there are three separate bases why this count does not state a claim at all.

The first is that they have no standing under the Wagoner rule. And the second is that even if the Wagoner rule didn't exist, this claim would be barred by the New York doctrine of in pari delicto, as well as by doctrine of in pari delicto from various jurisdictions across the country and around the world.

These plaintiffs stand in the shoes of two funds. The claims that they are bringing are the funds' claims. The funds claim that their outside auditors were negligent in not telling the funds that their asset values were overstated, that they were in financial trouble starting in 2005 and 2006. Yet, at the same time, these plaintiffs sue the seven people who actually ran the funds: four people who served as directors

and three individuals inside at Bear Stearns, the people who day-to-day ran the funds, made the investment decisions, prepared the financial statements, did all the things that management of a fund or a company or any entity would do. The complaint alleges that those people knew everything that is alleged to have been a wrongful act that was missed, allegedly, by Deloitte in their audits.

THE COURT: That's the in pari delicto argument.

MR. RAFFERTY: It's also the Wagoner argument, your Honor, because the arguments, they're not the same. And, by the way, the plaintiff says in the last submission we put in --

THE COURT: One of the difficulties I had in trying to read these 230 pages and retain what I was reading was it's not very clear who is really the aggrieved party. It fluctuates between the investors and the funds, the overseas leverage fund and the overseas high-grade fund.

MR. RAFFERTY: Well, your Honor, the fact of the matter is the only parties that could be aggrieved here but they're not here are the investors because the people who ran the fund knew. So this claim reduces to the argument that we're suing you because you didn't tell us what we already knew. We were willfully overstating our asset values, we were willfully attempting to deceive the investors to retain old investors and to attract new ones, and you didn't tell us that.

THE COURT: Who is "we" and who is "you"?

MR. RAFFERTY: "We" is the fund. The fund can only operate through humans and the humans who operated this fund are the people that they've also sued. So those seven individuals over time knew, according to this complaint.

THE COURT: And their theory is that the trustee appointed by the Cayman Islands court sitting on behalf of the funds can't sue the officers and directors of the funds and the accountants of the funds?

MR. RAFFERTY: No, your Honor, I take no position. I believe they can sue. In pari delicto does not provide a defense to insiders and that's been clear. The HealthSouth case, the AIG case, which was just part of the Kirshchner decision; the insiders in those cases were all sued. The allegations in those complaints, in the AIG complaint, which was a derivative action in the Delaware Chancery Court, the allegations against the insiders were the basis for the in pari delicto defense and the dismissal on behalf of Price Waterhouse Coopers.

But the insiders, their motions to dismiss were denied because an insider -- the CEO of a firm can't defend himself in a suit by his entity by saying, well, my knowledge is imputed to you and you, therefore, can't sue me. Vice Chancellor Strine decided that in HealthSouth.

THE COURT: Your theory is they can sue the officers and directors but they can't sue your client.

MR. RAFFERTY: Exactly right, your Honor, because my client stands at a different position. We're a third party. We're not inside. And in pari delicto has always applied to third parties.

THE COURT: The Wagoner rule.

MR. RAFFERTY: By the way, the Court of Appeals has said in a footnote in the Kirshchner decision that the Wagoner rule is a gloss on in pari delicto that derives from federal bankruptcy law and that it is not actually part of substantive law, contrary to what plaintiffs say in their memorandum on Monday, but they get to the same place.

What the Wagoner rule says is that you're standing in the shoes of someone who couldn't sue this defendant and, therefore, you can't sue them. You have no standing to bring that claim. The in pari delicto defense is simply you already knew what you're claiming and you were engaged in the wrongdoing and, therefore, you can't sue us to recover for your own wrongdoing.

THE COURT: On a simplified argument, if I understand this correctly, the trustee can't sue the accountant because the trustee has the imputed guilty knowledge of all the insiders of the company.

MR. RAFFERTY: Absolutely.

THE COURT: And the trustee can't sue on behalf of the investors because there's no standing to represent the

investors.
MR. RAFFERTY: That's absolutely right, your Honor.
THE COURT: That's the whole point.
MR. RAFFERTY: That's the point in a nutshell. It's Wagoner; it's in pari delicto.
THE COURT: Let me ask Mr. Allen how he gets around that. I'll come back to you if I need you.
MR. RAFFERTY: Thank you, your Honor.
MR. ALLEN: Your Honor, first of all, the Varga plaintiffs are, as you mentioned, the liquidators of these funds. They are suing on behalf of the funds. They are not asserting claims on behalf of investors.
THE COURT: Notwithstanding various of the allegations that you made.
MR. ALLEN: Your Honor, we tried in the complaint from the first paragraph on to make it clear that these claims were being brought on behalf of the funds. I'm sorry if we were not --
THE COURT: Paragraph 39: At all times investors of the overseas funds had decisionmaking and control powers conferred upon them by the overseas fund's governing documents, etc.
What's the point of that allegation?
MR. ALLEN: Well, your Honor, that raises a different issue.

THE COURT: What's the point of that allegation, Mr. Allen?

MR. ALLEN: The point of that allegation is to allege causation because one --

THE COURT: Against the investors, on behalf of the investors?

MR. ALLEN: Well, one of the issues that the Deloitte defendants raise, in fact, the basis for their motion to dismiss that was filed was that we had not adequately alleged causation.

THE COURT: Causation must involve the entity that is suing. The investors are not suing. Why are you giving me this paragraph 39, to mislead me?

MR. ALLEN: Not to mislead you at all, your Honor.

THE COURT: That's how I read it.

MR. ALLEN: Let me try to explain it.

THE COURT: Totally irrelevant and misleading.

MR. ALLEN: I'm not being clear enough.

The original motion to dismiss that the Deloitte defendants filed went to the issue of causation. Their argument was that because all of the insiders were so-called "in" on the misconduct, that we could not establish any causation from the professional malpractice of the Deloitte defendants because their argument being all the insiders who were running the fund were actually engaged in the conduct. So

if the Deloitte defendants had done their job and brought that misconduct to the -- reported that in their audits, nothing would have happened differently. The reason we included the allegation about the investors' rights, the investors have rights to act on behalf of the funds.

THE COURT: Why in this complaint am I hearing that?

MR. ALLEN: Because in order to show why in response to the Deloitte defendant's argument that because all these insiders had guilty knowledge, it didn't really matter what the Deloitte defendants reported in their audit reports.

THE COURT: Is this a complaint about the investors' rights to change management or is it a complaint --

Mr. Allen, I can interrupt you but you can't interrupt me.

MR. ALLEN: I'm sorry. I apologize.

THE COURT: I have to make a decision so I'm trying to get your help.

Is this a complaint on the ability of the investors to change management, or is it a complaint supposedly on the basis of the overseas funds to gain a recovery?

MR. ALLEN: Well, your Honor, I would say it's both.

THE COURT: It's both?

MR. ALLEN: The reason the investors' ability to take action to change the directors is relevant is that it is relevant to this causation issue.

Your Honor, let me just try to explain this. The first audit report we're challenging is the audit report of Deloitte that was delivered on or about April 29, 2006. That audit report, the cover letter to that is addressed to the shareholders of the funds. Our claim is that by April 29, 2006, there had been a great deal of misconduct in connection with these funds. There had been a long series, as you recall, of these related party transactions where Bear was doing trades or the managers of the funds were doing trades with other Bear affiliates. They weren't getting the trades approved. Those trades were being done at improper prices, at excessive prices.

What we're saying is that if Deloitte had done their job and in that April 29, 2006 report told the shareholders that this kind of conduct was going on, then the shareholders could have acted on behalf of the fund to go -- and the shareholders got this right in -- all parties agree the shareholders got this right in August of 2006, that the shareholders could have taken action to change the directors and, your Honor, that would have been a very important --

THE COURT: It's a right of the shareholders. It's not a right of the company. And you're supposed to be coming before me to champion the right of the company.

Paragraph 80 alleges investors in the high-grade overseas fund relied to their ultimate detriment and failed to require the corrective action be taken based upon the Bear

Stearns party's misleading representations with regard to the low-risk nature of the high-grade funds, as well as the Bear Stearns party's ability to manage any potential risk and avert the risks of any conflicts, largely through the supposed independent work of the Deloitte defendants and the Walker defendants.

First of all, you need to go back to school to learn to write English. Secondly, I'm entitled as a reader of this document to a clear statement of your position. And, third, this lawsuit has nothing to do with the investors.

So, why are you giving me this allegation? Why are you giving me these prolix concatenations of words and phrases that mean nothing?

MR. ALLEN: Your Honor, what we were trying to say was that --

THE COURT: Then say it.

MR. ALLEN: -- the investors could have taken action on behalf of the funds and that would have resulted in there being different management of the funds, and the investors could have done that if the Deloitte defendants had done their job and performed the audits properly and reported about the misconduct that was occurring in the funds. And, your Honor, that could have made a huge difference because if this information is reported in 2006 and actions can be taken, then it would have been possible to avoid what ultimately happened

when this all came to light later in 2007.
THE COURT: Paragraph 256 alleges Bear Stearns thus caused the overseas funds and their respective master funds, as well as the domestic funds, to engage the Deloitte defendants, the regular auditor for all Bear Stearns related entities, as the supposedly independent auditor for the overseas funds and their respective master funds.
Does this change anything that Deloitte is obligated under the law to do or not, or is this just another paragraph that throws stuff into my face intending to divert me from the attention to what is really involved in the document?
Then the paragraph goes on: The Deloitte defendants in turn rendered audit reports to the shareholders of the overseas funds and the master funds concerning the accuracy of their financial statements including, without limitation, the master funds investments and evaluations contained therein.
So who's the plaintiff, the shareholders or the funds?
MR. ALLEN: The plaintiff is the liquidator suing on behalf of the funds, your Honor.
THE COURT: Then why did you give me that paragraph?
MR. ALLEN: Because in describing the actual reports, if you look at one of the reports, the audit reports that is done by Deloitte, it is addressed to the shareholders of the funds. So all we were doing was saying even though the duty that's owed by Deloitte under the engagement letter and their

duty to use reasonable care as an accountant is owed to the funds, at least as we allege in our complaint, the actual letter was addressed to the shareholders and that was the reason we wanted to put that in there.

THE COURT: Pardon me, but the explanation is deficient. This is a terrible, terrible complaint. But more to the point, I don't see how you can get around Mr. Rafferty's arguments.

MR. ALLEN: Well, your Honor, let me just summarize what our position is with respect to the Wagoner rule. First of all, we, to the extent the Court is looking into constitutional standing or case of controversy, we think we've clearly alleged that.

But with respect to what's referred to as the prudential standing doctrine under Wagoner, our position really is two-fold. No. 1, that the Wagoner rule doesn't apply because New York law doesn't apply to this professional malpractice claim. No. 2, even if the Wagoner rule did apply, the allegations in the complaint satisfy the adverse interest exception to the in pari delicto defense.

With respect to the choice of law issue, your Honor, as we explained in our brief that we filed on Monday, there are clearly conflicts between New York law, Cayman law and Pennsylvania law with respect to these claims and particularly with respect to the in pari delicto defense. Those are the

three laws that are potentially applicable here, your Honor. Deloitte U.S. did business out of its office in Philadelphia. These letters I referred to are addressed Deloitte Philadelphia. And, in addition, Deloitte Cayman, which is based in the Cayman Islands, was also involved here.

So, because there are differences as we've explained in our brief between New York law, Cayman law, and Pennsylvania law on this in pari delicto defense, we believe that the Court will need to make a choice of law decision with respect to this claim.

And to the extent the defendants are presenting this argument as a standing issue, which is the language of Wagoner that it's considered a standing rule, under both Pennsylvania law and Cayman law, in pari delicto, to the extent in Cayman law the defense is called by a different name, is not considered an issue of standing. It's actually considered to be an affirmative defense.

THE COURT: Could you look at paragraph 466 and follow it and tell me if you're not trying to tell me that New York law applies?

MR. ALLEN: Well, there was work that was connected to activities in New York because the portfolio managers were based in New York.

THE COURT: Aren't these allegations intended to tell me that New York law applies?

MR. ALLEN: No, these allegations are intended, as the heading says, that the Deloitte defendants have significant contacts with New York. In other words, the purpose of these allegations was to satisfy personal jurisdiction requirements, your Honor, and when the --

THE COURT: Personal jurisdiction is satisfied because there is substantial effects of work in the Cayman Islands in New York. It tells me that the investors are really the parties who are bringing suit and that New York law should apply because that's where the investors live and make decisions.

The trouble with having a 230-page complaint, Mr. Allen, is you lose sight of the forest for the trees. You are so awash in details that you don't know which part is which and what's driving what.

MR. ALLEN: Well, your Honor --

THE COURT: The complaint has run away from you as it's running away from all of us.

The fact of the matter is that you have a trustee trying to champion the rights of investors in various kinds of ways that you're trying to explain, yet bringing a lawsuit on behalf of funds that were, in your words, corrupted by the insiders. And you can't blame the outside auditor for the corruption shared with insiders. You just can't do that. You can't plead away from it, and you can't plead a legally

sufficient claim for relief based on that. Your complaint is deficient. You can't plead again.

MR. ALLEN: Pardon me?

THE COURT: You cannot plead again.

MR. ALLEN: Your Honor, if I can just address this issue. As I said and as we've explained that we believe here the law of the Cayman Islands will apply, there's a great many allegations in the complaint that go to the contacts with the Cayman Islands. These were funds that were formed under the law of the Cayman Islands. The liquidators were appointed by the court in the Cayman Islands --

THE COURT: Maybe you should sue in the Cayman Islands.

MR. ALLEN: -- Cayman Islands to pursue these claims.

THE COURT: Maybe you should go and sue in the Cayman Islands.

MR. ALLEN: Well, your Honor, I think we can satisfy the personal jurisdiction requirements and still be able to show that Cayman law is what applies here and I think there are --

THE COURT: Notwithstanding your allegations in the complaint.

MR. ALLEN: Well, your Honor, we have the personal jurisdiction allegations but we also have -- there are a lot of allegations that show that in terms of these three potentially

applicable jurisdictions, the jurisdiction that has the greatest interest is the Cayman Islands.

THE COURT: Then why give me these allegations about all effects coming to New York?

MR. ALLEN: Well, because we have to establish personal jurisdiction over these defendants.

THE COURT: On behalf of the investors but not on behalf of company.

Again, you're falling into your own trap, trying to lift yourself by the bootstraps of the investors to make a claim for the liquidators appointed by the Cayman Island authorities. Go sue in the Cayman Islands.

All right. I think I've heard enough on this.

MR. ALLEN: Your Honor, if I may just add one point because even if the New York law does apply, one thing that I don't believe counsel for Deloitte mentioned during their argument but I think even they recognize, under the most recent Court of Appeals decision, under the Kirshchner decision, there is recognized what's known as the adverse interest exception to the in pari delicto doctrine.

And the court so clearly, even under Kirshchner, it is not the case that there is no adverse interest exception. There still is an adverse interest exception which the court defines -- I have page 17 of the slip opinion here, and it talks about the situation where the conduct of the employees or

agents that's involved in the motion benefits both the corporation and the employees. And in that case the court says that generally in pari delicto, the adverse interest exception wouldn't apply.

And the court says this rule avoids ambiguity where there's a benefit to both the insider and the corporation and reserves the most narrow of exceptions for those cases -- outright theft or looting or embezzlement -- where the insider's misconduct benefits only himself or a third party, i.e., where the fraud is committed against a corporation rather than on its behalf.

Here, your Honor, we have very extensive allegations about why the conduct of the insiders here -- that's the basis for their in pari delicto defense -- was definitely taken completely for their benefit and completely against the interest of the funds.

THE COURT: Give me an allegation.

MR. ALLEN: Well, your Honor, the --

THE COURT: Let's read the allegations.

MR. ALLEN: I will give it to you in one second, your Honor. I just have to look up the numbers.

If your Honor will look at paragraphs 182 to 184, starting there, you'll recall that one of the central allegations in the case is that throughout the life of these funds, the portfolio managers were engaging in related party

transactions with other Bear Stearns entities. And these related party transactions were not being approved as was required under the Investment Advisors Act, but these transactions basically amounted to Bear Stearns dumping assets into these funds at excessive prices.

So, in other words, what the funds were doing, your Honor, in these related party transactions was acquiring securities at excessive prices. That conduct fits within the adverse interest exception even as described in Kirshchner because that conduct doesn't benefit the fund at all.

THE COURT: Kirshchner described itself as this most narrow of exceptions, cases involving outright theft or looting or embezzlement.

MR. ALLEN: I would submit, your Honor, that if what the portfolio managers are doing, they are causing these funds to purchase assets from a related Bear Stearns entity at excessive prices, that is tantamount to stealing money from the funds because the funds are paying more than the securities are worth. Your Honor, it's exactly the same or it's tantamount to if they were paying the appropriate price, lower price, and then writing a check to Bear Stearns.

THE COURT: Your claim is for the investors again.

MR. ALLEN: Your Honor, that is not --

THE COURT: Anything else you want to tell me, Mr. Allen?

MR. ALLEN: I'm sorry, your Honor?
THE COURT: Anything else you want to tell me?
MR. ALLEN: I just want to say that that claim clearly is on behalf of the fund. If the fund is buying a security and the fund is paying too much for that security and it is paying the money to a related party, then that is definitely harming the funds, your Honor. There's money going out of the fund that should not be going out of the fund because they're clearly paying excessive prices for those securities.
THE COURT: But it's not looting and it's not embezzlement and in a manner of operation that you complain about. Thank you, Mr. Allen.
The motion to dismiss is granted. Normally, a motion under Rule 12(b)(6) attacking the complaint on the basis of various defenses would be premature and would require first an answer and then a motion under Rule 12(c) of the Federal Rules of Civil Procedure. However, because all the bases of the motions are in the complaint themselves and because this is the fourth time that we are involved with the sufficiency of this pleading, the motion under Rule 12(b) will be considered sufficient because it is based on matters already alleged.
Could you folks please find seats to sit down.
MR. ALLEN: Your Honor, if I may add just one other point.
THE COURT: No. We're finished.

The plaintiffs here are Jeffrey Varga and Mark Longbottom, each appearing in their capacities as joint official liquidators of the Bear Stearns High-Grade Structured Credit Strategies Overseas Limited fund and Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Overseas Limited funds, both called the overseas funds.

This motion involves that part of the complaint that alleges claims against Deloitte and Touche LLP, Deloitte and Touche Cayman Islands, and both being referred to as the Deloitte defendants. The other defendants are not involved in this motion.

This case goes back as it reaches me to April 2008. This case was related to two other cases I had. In June 2008, the first amended complaint came before me. In February 2009, I held oral argument on motion to dismiss in the three pending cases. That led to the voluntary dismissing of various of the complaints.

On April 24, 2009, plaintiffs Varga and Cleghorn (Longbottom) filed this action in Supreme Court New York County naming the Deloitte and Walker defendants. The case was removed to this court and docketed here. And I think the record will be sufficient in terms of itself.

In terms of the facts that have come to here, in March 2003, Bear Stearns created a pair of high-grade funds, a high-grade domestic fund and a high-grade overseas fund, the

latter of which was organized in Grand Cayman Island. Bear Stearns Asset Management was the investment manager for these feeder funds and was the sole general partner in the domestic fund and its officers comprised the majority of the board of the overseas funds. The feeder funds were designed to raise money for investment in various funds also created by Bear Stearns and also managed by Bear Stearns Asset Management and individual Bear Stearns actors.

The Deloitte defendants issued audit reports alleged to be clean despite the fact, as alleged, that Bear Stearns Asset Management was continuously making trades without obtaining various approvals and clearances and without regard to the stated intention to investors to make conservative trades that protected investor capital and interests.

It is alleged that the Deloitte defendants did this to secure investment in the funds allowing the Bear Stearns defendants to make elicit trades and create unreasonably risky investment without disclosure to the investing public.

The complaint alleges that in doing so the Deloitte defendants abdicated their duty to provide independent competent auditing in compliance with applicable standards, creating a facade of healthy investment funds with dynamic and savvy management.

The complaint goes on to allege that in the summer of 2006, investors began to seek withdrawal from the high-grade

funds because they were not performing as expected. In response, Bear Stearns Asset Management created the high-grade enhanced funds, expansions of the high-grade funds, and urged investors to transfer their interests into the enhanced funds. These funds were marketed as improved versions of the high-grade funds. The Bear Stearns defendants, the complaint alleges, similarly controlled these enhanced funds.

The complaint alleges that had the Deloitte defendants conducted proper audits, investors could have attempted to remove the overseas funds' directors, sought to have management restructured or liquidate the overseas funds, declined to invest or, in effect, add to redemptions of investments in the overseas funds or reported the infractions to the Cayman securities regulation authorities.

Thus, investors relied to their detriment on the misleading representations made by Bear Stearns Asset Management and by the opinions delivered by the Deloitte entities, suffering loss of investments when the funds' investments suffered a decline in value.

The standards applicable to a Rule 12(b) motion are well-known. I accept all factual allegations in the complaint as if proven, and I draw all reasonable inferences in favor of the plaintiffs. Then I examine the complaint to see if there are sufficient factual materials accepted as true to state a claim to relief that is plausible on its face. A complaint has

facial plausibility when the plaintiff pleads factual content that allows the court to draw reasonable inferences that the defendant is liable for the misconduct alleged.

This case is most authoritatively evaluated under Shearson Lehman Hutton, Inc. v. Wagoner, 944 F.2d 114 (2d Cir. 1991). In that case a bankruptcy trustee sought to bring claims against an investment adviser for aiding, abetting, and unduly influencing the bankrupt corporation into making bad deals. The Second Circuit held that under federal bankruptcy law, the trustee stands in the shoes of the bankrupt corporation and cannot bring claims that properly belong to the creditors. Under New York law, a claim against a third party for defrauding a corporation with the cooperation of management accrues to creditors and not to guilty corporation. Thus, the Second Circuit held the trustee lacked standing under Article III of the Constitution. There are many other cases saying the same thing. Kirshchner v. KPMG, a decision of the New York State Court of Appeals, 15 N.Y. 3d 446 states the rule that Mr. Allen read out.

The point here, and it's illustrated by the allegations I put to Mr. Allen, is that this complaint addresses the claims supposedly made by the trustees to champion the role of the investors and so-called right to change management, to complain to the Cayman Islands authorities and to do other things in the role of investors, by

seeking to make a claim on behalf of the company itself and, thus, to avoid the Wagoner rule, it shifts back away from the investors into the company itself.

But then it falls into the situation where the auditor is sued for the matters disclosed to the auditor and shared in knowledge with the auditor by the insiders of the company. And, thus, there is no basis to sue the auditor for sins committed by the company themselves. If the auditor has committed faults, it's on behalf of the opinion to the investors and not to the company which, through its officers and directors, knows the very faults that are complained of in this complaint. The narrow exception of Kirshchner does not apply to this kind of a situation.

Thus, I grant the motion to dismiss the complaint against the Deloitte defendants with prejudice and without leave to plead again. I find that under no way of pleading these allegations can these deficiencies be cured. Those are my findings and conclusions. Judgment is granted dismissing the Deloitte defendants from the case with prejudice and with costs taxed to plaintiffs. Thank you very much.

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