UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Refco, Inc. Securities Litigation	07 MDL 1902 (JSR)
This document applies to:	
MARC S. KIRSCHNER, As Trustee of the Refco Private Actions Trust, Plaintiff, -vs- PHILLIP R. BENNETT, SANTO C. MAGGIO, ROBERT C. TROSTEN, MAYER, BROWN LLP, MAYER BROWN INTERNATIONAL LLP, and GRANT THORNTON LLP, Defendants.	07 Civ. 8165 (JSR) **TRIAL BY JURY DEMANDED**
GRANT THORNTON LLP Defendant/Third-Party Plaintiff -vs- THOMAS H. LEE PARTNERS, L.P.; THL EQUITY ADVISORS V, LLC; THL MANAGERS V, LLC; THOMAS H. LEE EQUITY FUND V, L.P.; THOMAS H. LEE PARALLEL FUND V, L.P., THOMAS H. LEE EQUITY (CAYMAN) FUND V, L.P., THOMAS H. LEE; DAVID V. HARKINS; SCOTT L. JAECKEL; and SCOTT A SCHOEN, Third-Party Defendants.	

GRANT THORNTON LLP'S
THIRD PARTY COMPLAINT FOR CONTRIBUTION

Defendant and Third-Party Plaintiff Grant Thornton LLP ("Grant Thornton"), by and through its attorneys Winston & Strawn LLP, as and for its Third Party Complaint against Thomas H. Lee Partners, L.P.; THL Equity Advisors V, LLC; THL Managers V, LLC.; Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., (collectively the "THL Entities"), Thomas H. Lee, David V. Harkins, Scott L. Jaeckel, and Scott A. Schoen (together with the THL Entities, the "THL Defendants"), alleges as follows:

INTRODUCTION

This case is another in the litigation arising out of a scheme by Refco's former Chief Executive Officer and other Refco insiders that was designed to hide a large related-party receivable from anyone who might be looking, including from Refco's own auditor Grant Thornton. According to Plaintiff Marc S. Kirschner (as Trustee of the Refco Private Actions Trust), the Refco insiders bankrolled this scheme (the "Receivable Fraud") and Refco's ongoing operations by transferring and using assets that had been deposited by customers in accounts at Refco Capital Markets, Ltd. ("RCM"). These asset transfers (the "RCM Transfers") were allegedly necessary to provide Refco with operational funds and allowed Refco to continue to hide its true financial condition.

Following a 2004 leveraged buyout (the "LBO") in which certain affiliates of THL Partners purchased a majority share in Refco, the THL Defendants either directly or indirectly became Refco insiders, with knowledge of and superior access to all aspects of Refco's finances. The THL Defendants did nothing to stop the Receivable Fraud or the RCM Transfers, and they did not disclose or cause RCM or Refco to disclose any alleged impending insolvency to potential customers before accepting their deposits. To the contrary, through their active role in

management and collective control over the Board, the THL Defendants substantially assisted in Refco's alleged wrongdoing—directing and managing Refco's continued operations, keeping Refco and RCM in business and in the practice of accepting deposits from customers without any disclosure of alleged insolvency, and lending its imprimatur to Refco's continued financial health as it headed toward the initial public offering that was TH Lee's ultimate goal.

On October 15, 2009, Plaintiff Marc Kirschner filed a First Amended Complaint in this case, asserting claims against Grant Thornton, among others. Kirschner is acting here as Trustee of the Private Actions Trust, asserting claims contributed to the Trust by a subset of customers who had used RCM for foreign exchange transactions (the "FX Customers"). The First Amended Complaint asserted claims against Grant Thornton for aiding and abetting fraudulent inducement, aiding and abetting breach of fiduciary duty, and aiding and abetting conversion. On December 13, 2010, the Court adopted a Report and Recommendation recommending that all claims against Grant Thornton be dismissed with prejudice except for a claim of aiding and abetting fraudulent inducement, based on RCM's failure to disclose its alleged "hopeless insolvency" before accepting new deposits from FX Customers after the LBO.

While Grant Thornton denies any and all wrongdoing alleged in this suit, if Grant Thornton is held liable to the FX Customers in this proceeding, then Grant Thornton has a right to contribution from the THL Defendants. Grant Thornton seeks contribution on the theory that if RCM's failure to disclose any alleged "hopeless insolvency" indeed constituted actionable fraudulent inducement, and if the facts alleged against Grant Thornton do in fact constitute "substantial assistance," then the THL Defendants too "substantially assisted" such fraudulent inducement and should bear the same liability.

Grant Thornton brings these allegations upon information and belief, based on its review of, among other things, (a) filings of Refco with the Securities Exchange Commission ("SEC"); (b) filings, documents, and testimony obtained in connection with the following actions: In re Refco, Inc. Securities Litigation, 05 Civ. 8626 (GEL) (S.D.N.Y.); Kirschner v. Grant Thornton LLP, et al., 07 Civ. 11604 (GEL) (S.D.N.Y.); Kirschner v. Bennett, et al., 07 Civ. 8165 (GEL) (S.D.N.Y.); Krys & Stride, et al., v. Sugrue, et al., 08 Civ. 3065 (GEL) (S.D.N.Y.), 08 Civ. 3086 (GEL) (S.D.N.Y.); U.S. v. Bennett, No. 05 Cr 1192 (NRB) (S.D.N.Y.); U.S. v. Trosten, No. 05 Cr. 1192 (NRB) (S.D.N.Y.); U.S. v. Grant, No. 05 Cr. 1192 (NRB) (S.D.N.Y.); U.S. v. Maggio, No. 07 Cr 1196 (NRB) (S.D.N.Y.); In re Refco, Inc., et al, 05-60006 (RDD) (Bankr. S.D.N.Y.); In re Refco Capital Markets, Ltd. Brokerage Customer Securities Litigation, No. 06 Civ. 643; Capital Management Select Fund, Ltd., et al. v. Phillip R. Bennett, et al., No. 07 Civ. 8688; V.R. Global Partners, L.P., et al. v. Bennett, et al., No. 07 Civ. 8686; Kirschner v. T.H. Lee Equity Fund, et al., No. 07 Civ. 07-74; and (c) other relevant public documents.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1334, 1367, 1452 and Fed. R. Civ. P. 14(a)(1).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

PARTIES

3. Defendant Thomas H. Lee Partners, L.P. ("THL Partners") is a Delaware limited partnership with its principal office in Boston, Massachusetts.

4. Defendant THL Managers V, LLC ("Managers V") is a Delaware limited liability company with its principal office in Boston, Massachusetts.

5. Defendant THL Equity Advisors V., LLC ("Equity Advisors V") is a Delaware limited liability company with its principal office in Boston, Massachusetts.

6. Defendant Thomas H. Lee Equity Fund V, L.P. is a Delaware limited partnership with its principal office in Boston, Massachusetts, owned and controlled by Equity Advisors V and Managers V.

7. Defendant Thomas H. Lee Parallel Fund V, L.P., is a Delaware limited partnership with its principal office in Boston, Massachusetts, owned and controlled by Equity Advisors V and Managers V.

8. Defendant Thomas H. Lee Equity (Cayman) Fund V, L.P., is an exempted limited partnership formed under the laws of the Cayman Islands, owned and controlled by Managers V and Equity Advisors V (registered in the Cayman islands as a foreign company).

9. Defendant Thomas H. Lee ("Lee") was, at all relevant times subsequent to the LBO, a director of Refco. Lee founded the Thomas H. Lee Company, the predecessor of THL Partners, in 1974 and served as its Chairman and CEO from its inception until reportedly leaving that entity after October 2005. As a director of Refco serving on Refco's Board of Managers and Board of Directors and Chairman and CEO of THL Partners, Lee was actively involved in the decision to invest in Refco and in the THL Entities' subsequent role at Refco.

10. Defendant David V. Harkins ("Harkins") was, at all relevant time subsequent to the LBO, a director of Refco serving on Refco's Board of Managers and Board of Directors. Harkins also served on Refco's nominating and governance committee. Harkins is Vice Chairman and Managing Director of Private Equity Funds of THL Partners. As a director of Refco and Chairman and a top executive of THL Partners, Harkins was actively involved in the decision to invest in Refco and in the THL Entities' subsequent role at Refco.

11. Defendant Scott L. Jaeckel ("Jaeckel") was, at all relevant times subsequent to the LBO, a director of Refco serving on Refco's Board of Managers and Board of Directors. Jaeckel also served as Treasurer of New Refco, Treasurer of Refco Finance Holdings, LLC, and Treasurer of Refco Finance Inc., a co-offeror in Refco's Bond Offering of May 2004. Jaeckel currently is a Managing Director of THL Partners. Jaeckel previously served as Vice President of THL Partners. Jaeckel holds an M.B.A. from Harvard University, and his extensive experience in corporate finance includes previous employment in the Corporate Finance Department of Morgan Stanley & Co. As a director and officer of Refco and a top executive at THL Partners, Jaeckel was actively involved in the decision to invest in Refco and in the THL Entities' subsequent role at Refco. Jaeckel also attended meetings of the audit committee of Refco's Board of Managers.

12. Defendant Scott A. Schoen ("Schoen") was, at all relevant times after the LBO, a director of Refco serving on Refco's Board of Managers and Board of Directors. Schoen served as President of New Refco; President of Refco Finance, Inc., a co-offeror in Refco's Bond Offering of May 2004; and sole director of Refco Finance, Inc. Schoen also served on Refco's nominating and governance committee as well as its compensation committee. Schoen currently serves as THL Partners' Co-president. He previously served as a Managing Director and Vice President of THL Partners. Schoen received an M.B.A. and law degree from Harvard University, and, prior to joining THL Partners, was in the private finance department of Goldman, Sachs & Co. As a director and officer of Refco and a top executive at THL Partners, Schoen was actively involved in the decision to invest in Refco and in the THL Entities' subsequent role at Refco. Schoen also attended meetings of the audit committee of Refco's Board of Managers.

13. Third-Party Plaintiff Grant Thornton is an Illinois limited liability partnership with its principal offices in Chicago, Illinois.

GENERAL ALLEGATIONS

14. Grant Thornton was retained by Refco in or about March 2003 to perform an audit of certain financial statements of Refco and certain of its subsidiaries for the fiscal year ended February 28, 2003. Grant Thornton was subsequently retained as the independent auditor of Refco and certain of its subsidiaries, and it served in that role through mid-October 2005.

A. The FX Customers' Claims Against Grant Thornton

15. The First Amended Complaint alleges that funds deposited in accounts at RCM by the FX Customers were improperly used "to maintain the liquidity necessary to fund Refco and the Refco Insiders' cash needs, and thereby conceal Refco's true precarious financial condition." First Am. Compl. ¶ 5.

16. The First Amended Complaint alleges that "the Refco Insiders made no provision for repayment to RCM or its customers, including the FX Customers," of any of the funds that were used by Refco as part of the RCM Transfers. Rather, due to the $1.4 billion in debt Refco took on as part of the LBO, any ability of Refco to pay the FX Customers was allegedly foreclosed. First Am. Compl. ¶¶ 6, 7, 119-127.

17. The First Amended Complaint alleges that the FX Customers suffered losses totaling over half a billion dollars in deposits made with RCM that have not been returned. First Am. Compl. ¶ 13.

18. On December 13, 2010, this Court adopted the Report and Recommendation of Special Master Capra dated June 3, 2010, which recommended that all claims against Grant Thornton be dismissed with prejudice, except for a claim for aiding and abetting fraudulent

inducement. This aiding and abetting claim was limited to the primary wrong of RCM's failure to disclose its alleged "hopeless insolvency" before accepting new deposits. The Report and Recommendation limited the claims against Grant Thornton to new deposits made after the date of the LBO.

B. The LBO and the THL Defendants' Contemplated Role in Refco

19. In late 2003, THL Partners and its affiliates and representatives ("TH Lee") began exploring an interest in Refco.

20. As a result, TH Lee conducted extensive due diligence, which began in or about November 2003 and continued for approximately nine months until the closing of the LBO on or about August 5, 2004.

21. According to Schoen, TH Lee did due diligence on "every aspect of [Refco]'s business," including "the financials, . . . the accounting, . . . the audits, [and] the management." Testimony in U.S. v. Grant, at 1349:4-6.

22. As part of its due diligence in connection with the acquisition of Refco, TH Lee hired various advisors, including KPMG, Weil Gotshal & Manges, McKinsey & Company, Marsh & McLennan, Mercer Consulting, and Sandler O'Neil, expending nearly $10 million on their diligence efforts.

23. During and after the period of its due diligence activity, TH Lee became aware of, or consciously avoided learning about, fraudulent activity at Refco. Among other things, (i) KPMG's due diligence reports outlined warning signs regarding Refco's financial condition, (ii) the source of $500 million in excess cash discussed in a CSFB report was never reconciled by TH Lee, and (iii) TH Lee received a tip that Refco had been "sloughing off" trading losses into a Refco subsidiary.

24. First, on May 17, 2004, KPMG issued a draft due diligence report to TH Lee, summarizing its observations regarding the financial statements, accounting procedures, and internal controls at Refco, among other things. TH Lee insiders described this report as "awful" with no "real conclusion or recommendation." Insider George Taylor called it "the scariest accounting report" he had ever seen, and also compared it to another transaction of his wherein the company "was under [an] SEC investigation and had an ongoing FBI probe of its executives for fraud." The final report was condensed and rephrased to eliminate references to (i) Refco's exposure to credit risk and the recoverability of its receivables; (ii) the lack of detail in Refco's financial reporting; and (iii) Refco's operational risk related to the inadequacy of Refco's internal controls and accounting staff. This condensing and rephrasing was based on comments and feedback from TH Lee. These reports were to be provided to the underwriting banks, a fact known to TH Lee at the time the edits were made. Without financing from the underwriting banks, the LBO would not have been completed.

25. Second, the LBO called for the extraction of $500 million of cash from Refco upon the closing of the transaction. TH Lee, in conjunction with KPMG and CSFB, attempted to determine the source of the $500 million in excess cash. TH Lee was never able to reconcile its financial models with Refco's financial information, and in fact Jaeckel expressed discomfort with this unsolved discrepancy when he stated on April 28, 2004 that he "spent the night tossing and turning wondering how [THL] can get more comfort on the $500mm of excess cash." TH Lee insider George Taylor stated that "the 500 [million] dividend . . . issue centers squarely around our fundamental understanding of the business." No factual support was ever provided by Refco to TH Lee or KPMG identifying the source of the $500 million being distributed.

26. Third, Schoen has testified that on or about May 25, 2004, TH Lee learned of a Refco insider (later referred to as "Deep Throat" by KPMG) who revealed that Refco was "sloughing off" trading losses into a Refco subsidiary (the "Deep Throat Tip"). Testimony of Schoen in U.S. v. Grant, at 1553:24 – 1554:5.

27. Upon information and belief, TH Lee received this tip from a Bear Stearns banker, Lou Friedman, who advised that his cousin, Brad Riefler, had learned of this impropriety while working at Refco.

28. TH Lee informed KPMG about the Deep Throat Tip, but neither TH Lee nor KPMG (nor anyone else) alerted Grant Thornton.

29. After being advised of the Deep Throat Tip, KPMG prepared a list of proposed additional procedures to investigate the tip, but TH Lee never asked KPMG to perform these procedures. Instead, TH Lee simply asked Bennett to explain the allegation of fraud.

30. Upon information and belief, Bennett responded to TH Lee's inquiry by claiming that customer losses from the 1990s were run through unconsolidated overseas affiliates of Refco in order to offset their foreign tax charges and that Refco Group Holdings Inc. ("RGHI") had not, and would not, have any brokerage accounts with any Refco entities.

31. Bennett did not provide TH Lee with RGHI tax returns, organization, or ownership documents. Nor would Bennett agree to a meeting between TH Lee and Refco's tax advisers, Ernst & Young, LLP.

32. Instead, notwithstanding the fact that Refco was being accused of dishonesty, TH Lee simply accepted Bennett's false explanation of the Deep Throat Tip and probed no further, continuing instead toward its desired lucrative LBO, which was completed less than three months later.

33. On or about August 5, 2004, pursuant to the LBO, TH Lee acquired a majority ownership interest in Refco by buying out RGHI. In total, the THL Entities invested over $450 million in the company and then, by virtue of their collective position, directly or indirectly assumed a role in the company's management.

34. Critically, according to the First Amended Complaint, the "dissipation of RCM customer funds, including the FX Customer Funds," included the LBO dividend, in which "Refco claimed that it would distribute a $500 million dividend of 'excess cash.' In truth, the $500 million of alleged surplus cash on hand [which is the same $500 million that had TH Lee executives "tossing and turning"] was a fiction—$390 million of the $500 million 'dividend' were the proceeds of an 'overdraft' or 'loan' from BAWAG to RGHI and the other $100 million were customer assets improperly taken from RCM." First. Am. Compl., ¶ 110.

35. Another aspect of this alleged "dissipation of RCM customer funds" was Refco's entry into senior credit facilities consisting of a $75 million revolving credit facility and an $800 million term loan facility. The First Amended Complaint claims that "Refco used RCM customer funds" to make a "$150 million paydown" on this debt. *Id.*

36. According to the complaint, it was the LBO (and related borrowings)—all carefully planned by TH Lee, which was the primary beneficiary of these transactions—that plunged RCM into its alleged "hopeless insolvency." According to the complaint, it was the LBO that caused RGL and other Refco entities "to borrow $1.4 billion of bank and bond debt, which was used to buy the interests of the Refco Insiders and those acting in active concert with them for approximately four times more than they were actually worth." *Id.* ¶ 120. This assumption of debt—again, planned and executed by TH Lee—allegedly "entirely foreclosed repayment of the amounts owed to RCM's customers, including the FX Customers." *Id.* ¶ 122.

37. As part of the LBO, and as outlined in the Amended and Restated Limited Liability Company Agreement of New Refco ("New Refco LLC Agreement") and the Securityholders Agreement, both dated August 5, 2004, the THL Entities received various powers, including the right to appoint members to the Board of Managers. The New Refco LLC Agreement provided that "[t]he business and affairs of the Company shall be managed and controlled by or under the direction of a Board of Managers." Defendants Harkins, Jaeckel, Lee, and Schoen were elected to be directors on the eight-member Board of Managers.

38. As advertised in Refco's July 22, 2004 Confidential Offering Circular that was issued in connection with the LBO, through their directors on the Board of Managers, the THL Entities had "the ability to control all aspects of [Refco's] business."

39. The Securityholders Agreement effectively conferred on the THL Entities veto power over a wide range of corporate activities, as it required a 65% vote of outstanding shares to take a number of important actions and required Board of Managers approval for a wide range of corporate activities.

40. The THL Entities could also ensure that their interests were represented within Refco's management through their right to "reasonable representation" on the key committees of the post-LBO Refco's boards.

41. Schoen, Jaeckel, and George Taylor (another representative of TH Lee) became President, Treasurer, and Secretary of Refco, respectively.

42. Schoen has explained that as directors, they had obligations "to run the company the best way possible, to oversee and work with management. . . ." Testimony of Schoen in U.S. v. Grant, at 1433:4-8.

43. Pursuant to the management agreement entered into as part of the LBO ("Management Agreement"), the TH Lee affiliate Managers V—the same entity that manages and controls the various defendant funds that actually made the Refco investment—agreed that it would serve in an oversight and managerial capacity for Refco in return for tens of millions of dollars in fees.

44. The preamble to the Management Agreement reads in part as follows:

> WHEREAS, [Managers V] has staff specifically skilled in corporate finance, strategic corporate planning, and other management skills and advisory services.
>
> WHEREAS, [Refco] will require [Managers V]'s special skills and management advisory services in connection with its business operations and execution of its strategic plan.
>
> WHEREAS, [Managers V] is willing to provide such skills and services to [REFCO].

45. The Management Agreement stated that Managers V would provide advisory services to Refco under the following circumstances:

> [Managers V] hereby agrees that if . . . [Refco] reasonably and specifically requests that [Managers V] provide the services set forth below and [Managers V] agrees to provide such services, [Managers V] or one of its affiliates will provide the following services to [Refco] and its subsidiaries:
>
> (a) advice in connection with the negotiation and consummation of agreements, contracts, documents and instruments related to [Refco]'s or any of its subsidiaries' finances or relationships with banks or other financial institutions; or
>
> (b) advice with respect to the development and implementation of strategies for improving the operating, marketing and financial performance of [Refco] and, and [sic] other senior management matters related to the business administration and policies of [Refco] and its subsidiaries.

46. The THL Entities and affiliates have admitted to receiving at least $33.128 million in fees pursuant to the Management Agreement. The THL Entities and affiliates also

have admitted to receiving, on or about August 26, 2005, approximately $12.872 million in a lump-sum termination payment in accordance with the Management Agreement.

47. Consequently, after the LBO, by virtue of the Management Agreement, the THL Defendants undertook specific responsibilities with regard to the management of Refco, in addition to those duties that otherwise flow by virtue of their ownership of Refco and representation on its Board and key committees.

48. Following the LBO, the THL Defendants had control over all aspects of Refco business. Defendants Lee, Harkin, Jaeckel, and Schoen each individually and collectively controlled Refco through their high-level executive positions within, and control over, the THL Entities, their board membership of Refco, the services they and their affiliates provided pursuant to the Management Agreement, and their extensive involvement in the day-to-day management of Refco. As a direct result of their seniority and voice within Refco, each of the THL Defendants had the power and opportunity to, and did in fact, directly control and influence all aspects of Refco's business, including the fact that Refco and RCM continued in business after the LBO and accepted new customer deposits without first publicly disclosing their alleged "hopeless insolvency."

C. The TH Lee Defendants' Knowledge and Role After the LBO

49. As owners and managers of Refco, the THL Defendants had unfettered access to Refco's books and records and assumed direct oversight of Refco.

50. As part of this unfettered access, the THL Defendants were necessarily aware of RCM's practice of transferring deposits from customers, including the FX Customers, to other Refco entities so as to sustain Refco's business operations and acquisitions.

51. The operations of RCM were a substantial element of Refco's overall business model, over which the THL Defendants had direct oversight.

52. As a result of their executive positions within Refco, the individual defendants Jaeckel, Schoen, Lee, and Harkins knew or consciously avoided knowledge of the importance of the RCM Transfers to the continued funding of Refco's operations.

53. As a result of their executive positions and/or representation within Refco, the THL Defendants knew or consciously avoided knowing that RCM made substantial intercompany loans to other Refco entities using the cash and securities of RCM's customers, including the FX Customers. The THL Defendants knew or consciously avoided knowing that at the end of FY 2004 and FY 2005, RCM had outstanding loans of $975 million and $1.5 billion, respectively, to Refco affiliate Refco Global Finance Ltd. ("RGF"), even though RCM's revenues for those years were $325 million (net income of $90 million) and $424 million (net income of $135 million), respectively. These revenues were substantially less than the transfers to RGF.

54. According to the First Amended Complaint, the Refco affiliates' indebtedness to RCM was subordinated at the time of the LBO to new debt incurred during the LBO.

55. By virtue of their executive positions and/or representation within Refco, as well as their active participation in the LBO itself and their review of LBO-related documents, the THL Defendants were necessarily aware of (or consciously avoided knowledge of) any subordination that occurred as a result of new debt incurred during the LBO. The THL Defendants were also necessarily aware of (or consciously avoided knowledge of) the Refco affiliates' prospects for repaying those intercompany loans after the LBO.

56. The THL Defendants knew that customer cash obtained through the RCM Transfers was put to use by Refco and included on its balance sheet. In connection with Refco's acquisition of Cargill Investment Services, for example, TH Lee insider Max Strasburg acknowledged in a June 2005 email that the acquisition was being funded by customer cash, rather than by new borrowing. Yet despite their reservations, the TH Lee representatives on Refco's Board approved the acquisition, giving it the votes it needed to proceed.

57. Despite their position of power and control, at no point during or following the LBO did the THL Defendants disclose—or cause RCM or Refco to disclose—any alleged insolvency to the marketplace or to customers or potential customers of RCM.

58. In fact, on at least one occasion (in connection with an S-1 filing on August 8, 2005), defendants Harkins, Jaeckel, Lee, and Schoen actually signed publicly filed financial statements, making affirmative representations about Refco's financial condition.

59. Without the active assistance of the THL Defendants in undertaking all of the acts alleged above—including their management of Refco and RCM and their efforts to keep Refco and RCM in business and accepting new deposits after the LBO without any disclosure of alleged "hopeless insolvency"—the alleged fraudulent inducement against the FX Customers would not have occurred.

60. The RCM Transfers were used to fund Refco's financial operations, which allowed Refco to project an appearance of growth and success. This appearance of growth and success enabled Refco to complete an IPO in August 2005.

61. While the complaint erroneously contends that Grant Thornton actively participated and assisted with the IPO, it was in fact the THL Defendants that planned the IPO, carried out the IPO, and benefited from the IPO. As a result of the IPO—and consistent with the

plan they had developed before the LBO—the THL Defendants collectively reaped a windfall of over $232.3 million. Critical to this windfall was the public perception that Refco was a financially sound company, and, according to the First Amended Complaint, the RCM Transfers were critical to promoting this perception.

CLAIM FOR RELIEF

(Against THL Defendants for Contribution)

62. Grant Thornton repeats and realleges each and every allegation set forth in paragraphs 1 through 61 above as if fully set forth herein.

63. As demonstrated by the factual allegations set forth above, the THL Defendants knew of or consciously avoided knowledge of all the facts that Plaintiff has alleged constituted "hopeless insolvency" on the part of RCM after the LBO: the RCM Transfers, the intercompany loans from Refco to RCM, and the alleged subordination of those loans by virtue of the LBO.

64. Despite their position of power and control, at no point during or following the LBO did the THL Defendants disclose—or cause RCM or Refco to disclose—any alleged insolvency to the marketplace or to customers or potential customers of RCM.

65. Without the active assistance of the THL Defendants in managing Refco and RCM and keeping Refco and RCM in business and in the practice of accepting new customer deposits after the LBO without any disclosure of "hopeless insolvency," the alleged fraudulent inducement against the FX Customers would not have occurred.

66. In the event that it is determined that the FX Customers were the victims of fraudulent inducement and Grant Thornton is found to have aided and abetted that fraudulent inducement, then Grant Thornton would have a right to contribution from the THL Defendants

based on the allegations set forth above, which would demonstrate (in that event) that the THL Defendants too aided and abetted the fraudulent inducement.

67. Any injury suffered by the FX Customers for which Grant Thornton is held liable is the same injury caused by THL's conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Grant Thornton respectfully requests judgment against the THL Defendants for sums to which it is entitled by way of contribution under NY CPLR § 1401 *et seq.* for attorneys' fees, costs and disbursements, and for such further relief as the Court deems just and proper.

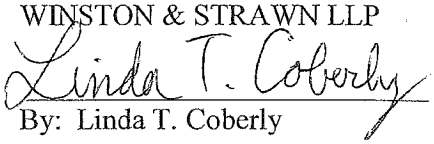
JURY DEMAND

Grant Thornton demands a trial by jury on all claims and defenses so triable.

Dated February 16, 2011
New York, New York

Respectfully submitted,

WINSTON & STRAWN LLP



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