UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SOCIÉTÉ GÉNÉRALE SECURITIES LITIGATION	:	No. 08-CIV-02495 (GEL)
	:	CLASS ACTION

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO PARTIALLY LIFT THE PSLRA DISCOVERY STAY IN ORDER TO ALLOW DISCOVERY LIMITED TO ISSUES OF SUBJECT MATTER AND PERSONAL JURISDICTION

Plaintiffs submit this reply memorandum of law in further support of their Motion to Partially Lift the PSLRA Discovery Stay in Order to Allow Discovery Limited to Issues of Subject Matter and Personal Jurisdiction ("Motion to Lift PSLRA Stay").

I. Defendants' Unsupported Assertion that the PSLRA's Discovery Stay Bars Jurisdictional Discovery Is False

Defendants' assertion that the Private Securities Litigation Reform Act of 1995 ("PSLRA") somehow bars the jurisdictional discovery that Plaintiffs seek is completely without merit. *See* Reply Memorandum of Law (1) in Further Support of the Motion of Defendants Société Générale, Daniel Bouton, Philippe Citerne and Didier Alix to Dismiss the Consolidated Amended Class Action Complaint and (2) in Opposition to Plaintiffs' Motion to Strike and Motion to Partially Lift the PSLRA Discovery Stay ("Defs' Reply") at 41. The case law is clear that, even in causes of action governed by the PSLRA, "[j]urisdictional discovery 'should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary.'" *Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, No. 05 Civ 9016 (SAS), 2006 U.S. Dist. LEXIS 11617, at *27 (S.D.N.Y. Mar. 20, 2006).[1]

As the court explained in *In re Baan Co. Sec. Litig.*, 81 F. Supp. 2d 75 (D.D.C. 2000): "There is no reason to read the [PSLRA] or its legislative history to abolish the case law permitting limited jurisdictional discovery and to create the very unfairness that case law prevents. To the contrary, . . . limited jurisdictional discovery simultaneously satisfies the statute and the case law." *Id.* at 83-84 (lifting the PSLRA's discovery stay to allow plaintiff to take jurisdictional discovery); *see also In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 346, 401 (S.D.N.Y. 2005) (permitting securities class action plaintiffs to take jurisdictional discovery in spite of PSLRA's discovery stay); *In re*

[1] Citations are omitted and emphasis is added throughout unless otherwise indicated.

DaimlerChrysler AG Sec. Litig., 197 F. Supp. 2d 86, 94 (D. Del. 2002) (same). Thus, the PSLRA's discovery stay does not bar Plaintiffs from taking the limited jurisdictional discovery that they seek here.

II. Defendants' Contention that Plaintiffs Have Failed to Make Even a *Prima Facie* Showing of Personal or Subject Matter Jurisdiction Is Baseless

Defendants concede – as they must – that jurisdictional discovery is warranted where a party has made a *prima facie* showing of jurisdiction. *See* Defs' Reply at 41 ("jurisdictional discovery is only warranted where a party has made a prima face [sic] showing of jurisdiction"). Defendants make a blanket assertion that Plaintiffs have failed to make a *prima facie* showing of jurisdiction, but completely ignore the Complaint's jurisdictional allegations, as well Plaintiffs' discussion of these allegations in their opposition to Defendants' motions to dismiss ("Plaintiffs' MTD Opp.").

As discussed in Plaintiffs' MTD Opp., the following facts support at least a *prima facie* showing of ***subject matter jurisdiction*** – under either the "conduct" or "effects" test:

- Société Générale's ("SocGen") ADRs traded in tandem with SocGen's common shares, and both of these securities lost value in response to the revelation of Defendants' fraud;
- The SEC and U.S. Attorney both have ongoing investigations into Defendant Day's massive insider trading, a large portion of which occurred just days before SocGen's January 24, 2008 announcement;
- SocGen CFO Frederic Oudea made several false and misleading statements in New York on September 10, 2007;
- SocGen's New York office purchased, warehoused, structured and issued residential mortgage-backed securities and CDOs that originated in the United States;
- SocGen's New York office manipulated valuation models in order to inflate the values of its RMBS and CDO portfolios and its VaR metric;
- SocGen's New York office prepared market risk reports, VaR analyses and valuations for SocGen's RMBS and CDO portfolios;
- SocGen's New York office was responsible for generating SocGen's response to the decline in its RMBS and CDO portfolios;

- SocGen's Audit Committee held several meetings in New York during the Class Period to review and discuss risk controls;
- SocGen's senior executives routinely visited New York to review and discuss SocGen New York's false valuations;
- Defendant Day engaged in insider trading, a significant portion of which took place within the United States; and
- SocGen's New York office engaged in a short-selling scheme with a U.S. hedge fund to foist CDOs, described by a former employee as "crap," onto certain of its customers.

These facts, which the Court must "'take . . . as true and draw all reasonable inferences in favor of [P]laintiff[s],'" establish at least a *prima facie* showing of personal jurisdiction. *NRDC v. Johnson*, 461 F.3d 164, 171 (2d Cir. 2006). Furthermore, jurisdictional discovery is especially appropriate here because subject matter jurisdiction will be determined, at least in part, by the "conduct" test, which "is intensely fact specific." *City of Edinburgh Council v. Vodafone Group Pub. Co.*, No. 07 Civ. 9921 (PKC), 2008 U.S. Dist. LEXIS 98888, at *9 (S.D.N.Y. Nov. 24, 2008).

As detailed in §X.B of Plaintiffs' MTD Opp., Plaintiffs have also alleged facts sufficient to make a *prima facie* showing of ***personal jurisdiction*** over Defendants Citerne and Alix, including that:

- Defendants Citerne and Alix, as co-CEOs of SocGen, were responsible for the creation of materially false and misleading statements that they disseminated in the United States;
- Defendant Citerne was a director of SocGen and a director of TCW, SocGen's asset management subsidiary with offices in New York, Los Angeles and Houston; and
- Defendants Citerne and Alix were primary participants in SocGen's contacts with the United States.

Based on these facts, Plaintiffs have made a *prima facie* showing of personal jurisdiction. *NRDC*, 461 F.3d at 171. Moreover, because Defendants Citerne and Alix dispute the above facts – claiming that they have ***no*** contacts with the forum – jurisdictional discovery is particularly

appropriate here. *See Gudavadze v. Kay*, 556 F. Supp. 2d 299, 308-09 (S.D.N.Y. 2008) (court should compel jurisdictional discovery when """jurisdictional facts are placed in dispute"""); *see also Pension Comm.*, 2006 U.S. Dist. LEXIS 11617, at *27 ("jurisdictional discovery 'should be granted where pertinent facts bearing on the question of jurisdiction are controverted'"). Accordingly, Plaintiffs are entitled to the jurisdictional discovery that they seek.

The cases Defendants cite in support of their contention that Plaintiffs have failed to make a *prima facie* showing of jurisdiction are unavailing. *In re Rhodia S.A. Sec. Litig*., 531 F. Supp. 2d 527, 539-42 (S.D.N.Y. 2007), is not instructive because here, unlike in *Rhodia*, the Complaint's personal jurisdiction allegations are based upon Defendants' ***U.S. conduct and contacts***, and are not premised solely upon Defendants' purported statuses as control persons. *Best Van Lines, Inc. v. Walker*, No. 03 Civ. 6585 (GEL), 2004 WL 964009, at *1, *8 (S.D.N.Y. May 5, 2004), *aff'd*, 490 F.3d 239 (2d Cir. 2007), is inapposite as well because there the court analyzed whether a ***domestic*** defendant's internet postings established a basis for the court to exercise personal jurisdiction under New York ***state*** law. Defendants' reliance on *APWU v. Potter*, 343 F.3d 619, 627 (2d Cir. 2003), and *Gudavadze*, 556 F. Supp. 2d at 309, is misguided as well because there the court found the proposed jurisdictional discovery to be immaterial and irrelevant. Here, Plaintiffs' proposed discovery bears directly upon disputed jurisdictional facts.

III. Considering the Gardella Declaration, Without Affording Plaintiffs the Opportunity to Take Jurisdictional Discovery, Would Be Unduly Prejudicial

Defendants' have submitted the Declaration of Gérard Gardella to dispute the personal and subject matter jurisdiction allegations made by Plaintiffs in the Complaint. However, Defendants' now oppose Plaintiffs' attempts to obtain jurisdictional discovery regarding this same issue. If the court considers the Gardella Declaration in making its determination of subject matter and/or personal jurisdiction, the court should allow Plaintiffs the opportunity to take jurisdictional

discovery, including deposing Gardella, to prevent Plaintiffs from being unduly prejudiced. *See* 15 U.S.C. §78u-4(b)(3)(B).

IV. Plaintiffs' Discovery Requests Are Reasonable and Narrowly Tailored

Defendants' assertion that Plaintiffs' discovery requests are somehow "overly broad" and constitute improper "merits discovery" is false. Defendants appear to take issue with ***only one*** of the discovery requests submitted by Plaintiffs, which seeks information regarding "SocGen's valuation of subprime-related assets in the United States." *See* Defs' Reply at 43. However, this request is narrowly tailored and reasonable in that it only seeks information relating to Defendants' ***conduct in and with the United States***, both of which are directly relevant to whether this Court has subject matter and/or personal jurisdiction over the claims and parties in this case. Because Defendants have raised no legitimate objection to Plaintiffs' proposed jurisdictional discovery, and because Plaintiffs' proposed jurisdictional discovery is reasonable and narrowly tailored to address the threshold issue of jurisdiction, Plaintiffs' proposed jurisdictional discovery should be permitted to ensure that the Court's determination of subject matter and personal jurisdiction are made based on a complete factual record. *Kamen v. Am. Tel. & Tel. Co.*, 791 F.2d 1006, 1011 (2d Cir. 1986) (courts "have required that the party asserting jurisdiction be permitted discovery of facts demonstrating jurisdiction").

V. Conclusion

For each of the foregoing reasons, Plaintiffs' motion should be granted and the discovery stay lifted in order to allow jurisdictional discovery, including Plaintiffs' proposed discovery.

DATED: April 20, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2009.

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