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lbarefoot@cgsh.com

May 15, 2020

VIA ECF

The Honorable Barbara Moses
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: DoubleLine Capital, LP v. Odebrecht S.A., No. 1:17-cv-4576-GHW-BCM

Dear Judge Moses:

We write on behalf of defendants CNO S.A., Odebrecht Engenharia E Construção S.A. and Odebrecht S.A. - Em Recuperação Judicial ("Odebrecht" and together with the other defendants in the above-captioned action, "Defendants") in response to the May 12, 2020 letter (the "May 12 Letter") filed on behalf of plaintiffs DoubleLine Capital LP, DoubleLine Income Solutions Fund, and DoubleLine Funds Trust (on behalf of its: 1) DoubleLine Core Fixed Income Fund Series; 2) DoubleLine Emerging Markets Fixed Income Fund Series; and 3) DoubleLine Shiller Enhanced Cape® Series) (collectively, "Doubleline" or "Plaintiffs" and together with Defendants, the "Parties"). Pursuant to Local Civil Rule 37.2 and Sections 2(b) and (d) of this Court's Individual Rules of Practice, Plaintiffs have requested a pre-motion conference regarding their contemplated motion to request an adverse inference instruction in respect of certain unavailable evidence. As discussed further below, Plaintiffs' request is premature, both given the incomplete nature of the Parties' meet and confer process, and in light of the current status of discovery, where not a single document has been produced and where it is therefore impossible to determine whether any unavailable information can be replaced through additional discovery. Accordingly, Defendants respectfully submit that Plaintiffs' request should be denied.

I. Background

The unavailability of the evidence for which Plaintiffs now seek an adverse inference instruction is neither a new fact nor in dispute. On December 21, 2016, Odebrecht executed a plea agreement in respect of one count of conspiracy to violate the anti-bribery

provisions of the Foreign Corrupt Practices Act. *United States v. Odebrecht S.A.*, No. 16-cr-643 (E.D.N.Y.).[1] As part of that plea, Odebrecht admitted in a statement of facts (the "Statement of Facts") that, among other things, former officers and employees of Odebrecht (many of whom have separately pled to wrongdoing and served criminal sentences) operated a system called "MyWebDay," which "was used for making payment requests, processing payments and generating and populating spreadsheets that tracked and internally accounted for" bribery-related payments and that, "in or about January 2016 . . . employees and/or agents of [Odebrecht] intentionally caused the destruction of physical encryption keys needed to access the MyWebDay system," and that as a result, "significant evidence from the MyWebDay system was rendered inaccessible." Statement of Facts ¶¶ 25, 73.

As part of its plea agreement and in efforts to resolve issues regarding this past conduct, Odebrecht agreed that it would not contradict its acceptance of responsibility or any of the facts contained in the Statement of Facts. Plea Agreement ¶ 28, *Odebrecht S.A.*, No. 16-cr-643 (E.D.N.Y. Dec. 21, 2016). Accordingly, Defendants made significant admissions in their Answer, as well as in response to Plaintiffs' requests for admission, attached to the May 12 Letter. Defendants also have reaffirmed on multiple occasions that they cannot and will not take any position inconsistent with the Statement of Facts. *See*, *e.g.*, Answer at 1 n.2.

II. The Pre-Motion Conference is Premature Given the Parties' Incomplete Meet and Confer

Your Honor's individual practices provide that "[n]o discovery dispute will be heard unless the moving party . . . has first conferred in good faith with the adverse party or parties . . . in an attempt to resolve the dispute." Individual Rule of Practice 2(b). Plaintiffs have not satisfied this requirement.

Contrary to Plaintiffs' suggestion that the contemplated motion was discussed on a May 8, 2020 meet and confer, the concept of an adverse inference instruction was first raised by Plaintiffs at 6:15 PM on May 11, 2020, less than twenty-four hours before Plaintiffs filed the May 12 Letter. During that call, Defendants reiterated that they had no intention of contesting the facts contained in the Statement of Facts regarding the destruction of the MyWebDay encryption keys and the resulting unavailability of certain information, and requested time to consider the relief contemplated by Plaintiffs in order to determine whether a mutually agreeable resolution could be reached without the need for Court intervention. In particular, Defendants requested that Plaintiffs provide the specific adverse inference instruction Plaintiffs intended to request from Your Honor. *See* Ex. A at 8. Plaintiffs declined to provide additional information regarding the specific scope of their anticipated request, and instead unilaterally asserted that the Parties had reached "an impasse." *Id*. at 5. The May 12 Letter followed.

Because the May 12 Letter filed with the Court does not specify how Plaintiffs would propose to implement their requested adverse inference, Defendants again requested the terms of the proposed adverse inference instruction Plaintiffs intend to seek in the contemplated motion. *Id*. at 3.[2] As of the filing of this response, Plaintiffs have yet to provide any further

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[1] As detailed in Plaintiffs' third amended complaint (ECF No. 61, the "TAC") and in Defendants' answer to the TAC (ECF No. 106, the "Answer"), the individuals involved in the underlying criminal conduct are no longer employed by Odebrecht and, in many cases, have pled guilty to criminal offenses in foreign jurisdictions.

[2] The precise terms of the proposed instruction are particularly important given Plaintiffs' current generalized request, which appears to contemplate an instruction that would cover a wide range of issues, including elements entirely unrelated to the MyWebDay information, such as Plaintiffs' claims of reliance and loss causation.

detail. Instead, subsequent to filing the May 12 Letter, Plaintiffs informed Defendants that they would not agree to discuss a negotiated resolution of this dispute unless Defendants stipulated to judgment on all liability issues—notwithstanding that such a demand far exceeds any reasoned view of the scope of relief Plaintiffs could even conceivably seek in the form of an adverse inference, which is what their contemplated motion seeks. *Id*. at 1. By setting up this false dichotomy, Plaintiffs seek to burden this Court with an unnecessary dispute without an opportunity for the Parties to fairly resolve it. This recent demand notwithstanding, and while reserving all rights, Defendants continue to be willing to meet and confer with Plaintiffs to determine whether there is a mutually agreeable resolution that would obviate the need to burden the Court with Plaintiffs' contemplated motion.

Given that Plaintiffs have not yet provided necessary detail regarding the relief they would request in their proposed motion—which has prevented any meaningful meet and confer process—and in light of Defendants' continued willingness to discuss a potential resolution, Defendants respectfully submit that Plaintiffs' request for a pre-motion conference be denied pending the Parties' further efforts to meet and confer.

III. Plaintiffs' Contemplated Motion is Premature Given the Status of Discovery

Even if Plaintiffs had fulfilled their obligations to adequately meet and confer regarding their request (which they did not), Plaintiffs' contemplated motion would still be premature given the extraordinarily early stage of discovery in this action.

Under the Federal Rules of Civil Procedure, a party may seek spoliation-related sanctions in respect of information that "should have been preserved in the anticipation or conduct of litigation [if] lost because a party failed to take reasonable steps to preserve it, and [where] it cannot be restored or replaced through additional discovery." *See* Fed. R. Civ. P. 37(e) (emphasis added); *see also* Fed. R. Civ. P. 37(e) Advisory Committee's Note ("Rule 37(e) directs that the initial focus should be on whether the lost information can be restored or replaced through additional discovery . . . . If the information is restored or replaced, no further measures should be taken."). Moreover, the party seeking sanctions is entitled to measures no greater than necessary to cure any prejudice suffered. *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec.*, 685 F. Supp. 2d 456, 469 (S.D.N.Y. 2010), *abrogated on other grounds by Chin v. Port Auth. of N.Y. & N.J.*, 685 F.3d 135 (2d Cir. 2012) ("It is well accepted that a court should always impose the least harsh sanction that can provide an adequate remedy."). Here, Plaintiffs cannot establish at this preliminary stage—more than eighteen months before the close of discovery—that the severe sanctions they request are warranted.

Although the May 12 Letter refers to the unavailability of "crucial evidence regarding the scope and nature of the Bribery Scheme," May 12 Letter at 2, it does not identify any specific alleged facts that have been rendered unavailable by virtue of the 2016 destruction of the MyWebDay encryption keys. Nor have Plaintiffs suggested, much less demonstrated, that the information cannot be replaced or otherwise approximated through additional discovery. And for good reason—not a single document has been produced in this case. Indeed, although on February 26, 2020, Defendants provided to Plaintiffs proposed search terms that could be used to collect documents responsive to Defendants' requests for production, Plaintiffs have yet to provide a specific response or counter propose alternative or modified search terms. Similarly, Plaintiffs have not yet proposed search terms for use in collecting documents in response to Plaintiffs' request for production, nor have Plaintiffs proposed custodians for their

requests. *See* Ex. B at 1. Given that discovery has not yet commenced in earnest, Plaintiffs simply cannot demonstrate that the unavailability of any MyWebDay information will prevent them from presenting their contentions regarding any element of their claims. Nor can Defendants assess, without the benefit of further progress in discovery, whether any asserted prejudice can be mitigated or addressed through alternative means.

Moreover, to the extent Plaintiffs have identified informally any particular fact or contention that they believe could not be presented to a jury as a result of the unavailable MyWebDay information, Defendants have been willing to explore alternatives to burdening the Court with unnecessary disputes. To date, Plaintiffs have identified only a single issue that they are concerned about with respect to the unavailable MyWebDay information: their perceived dispute regarding whether the total volume of bribe payments at issue in the case is $788 million, as stated in the Statement of Facts, or $3.3 billion, as asserted in the TAC. In an effort to resolve this perceived factual dispute, Defendants proposed on March 17, 2020 a stipulation by which Defendants would agree not to "raise any claim or defense in [this action] or otherwise assert that any element of any claim asserted in the TAC is not satisfied, on the basis that the total amount of [bribe payments during the relevant period] was any amount less than $3.3 billion." Ex. C at 2. Defendants further proposed to agree that "Plaintiffs shall not be required to establish, in order to satisfy any element of any claim asserted in the TAC, that the total amount of [bribe payments during the relevant period] was any amount more than $788 million." *Id.* at 3. Although Plaintiffs suggested on a May 8, 2020 meet and confer that they would propose revisions to the discussion draft of the stipulation, they have subsequently reversed course, and now have communicated that they are not willing to consider the terms of that stipulation.

At base, Plaintiffs are requesting an adverse inference instruction—the precise scope of which they have declined to specify—before any discovery has commenced and, at a minimum, two years before a jury would be empaneled. Because it remains to be seen (i) what, if any, facts or contentions cannot adequately be presented through use of other evidence, or (ii) whether there exist other means to eliminate from contention any perceived factual disputes that could arise from the unavailability of any evidence, Defendants believe Plaintiffs' contemplated motion is premature, and the Court should deny Plaintiffs' request for a pre-motion conference pending the completion of discovery.[3]

For the reasons set forth above, Defendants respectfully request that at this stage this Court deny Plaintiffs' request for a pre-motion conference regarding their contemplated motion to request sanctions for spoliation.

Sincerely,

/s/ Luke A. Barefoot

Luke A. Barefoot

Enclosure
cc: All counsel of record (via ECF)

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[3] On the Parties' brief May 11 call, Plaintiffs suggested that their requested adverse inference instruction, if granted, could affect the scope of outstanding discovery. Of course, Defendants are entitled to rebut any presumption of prejudice resulting from the destruction of the MyWebDay encryption keys, including by pointing to the availability of substitute evidence, *see Pension Comm.*, 685 F. Supp. at 468, and Plaintiffs cannot artificially restrict the scope of discovery before it has commenced in order to stymie that right.

Exhibit A

Kessler, Thomas

From: Karl Barth <karlb@hbsslaw.com>
Sent: Wednesday, May 13, 2020 4:59 PM
To: Barefoot, Luke A.
Cc: Kessler, Thomas; Hou, Victor L.
Subject: Re: DoubleLine v. Odebrecht

Luke:

In our opinion, the facts underlying these spoliation issues are outrageous and warrant an extreme sanction. After reviewing the applicable caselaw with respect to conduct similar to your client's document destruction in this case, I don't think that we would enter into an agreement for anything less than a stipulated judgment on liability issues.

Thanks,

Karl

From: Barefoot, Luke A. <lbarefoot@cgsh.com>
Sent: Wednesday, May 13, 2020 4:12 AM
To: Karl Barth <karlb@hbsslaw.com>
Cc: tkessler@cgsh.com <tkessler@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>
Subject: Re: DoubleLine v. Odebrecht

Karl - I really apologize if there has been a miscommunication and really agree with you that some extensive back and forth on this isn't in anyone's interests. All I will do in this email is clarify one point that I fear didn't come across - all we are now asking for is to see the terms of the jury instruction you are proposing so we can discuss it with our client and see if we can reach agreement. This is specifically related to the relief you're asking for now from the court and separate from the stipulation we previously proposed which you've now made your position crystal clear on.

I hope that helps.

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On May 12, 2020, at 11:03 PM, Karl Barth <karlb@hbsslaw.com> wrote:

Luke:

I am not sure what the purpose of this email is, but as you are well-aware it is a complete misstatement of our position. We have no interest in a stipulation that merely re-circulates admissions that your client was already forced to make in pleading guilty to federal criminal charges. Merely admitting these limited facts again is just duplicative and not helpful in the slightest to our ability to prove our claims at trial.

The stipulation proposed by your client is a complete non-starter and marking it up would essentially entail deleting it and starting over. It makes no admissions and is jam-packed with loopholes and weasel-words to the point that it provides absolutely no benefit and seeks to push an unworkable and prejudicial procedure and shift all the burdens to my client. We have no interest in discussing whatever little tweaks your client has in mind to this document because it is fundamentally flawed and any agreement that might be arrived at will look nothing at all like the document your client has proposed. This inability to reach an agreement is entirely your client's fault. I explained what we needed to enter into an agreement, and your client saw fit to ignore our requirements entirely and attempt to foist this sham on my client in what we believe was not a good-faith attempt to arrive at an agreement.

If your client has no desire to actually admit to almost all of the elements of our claim, your time will be better spent elsewhere.

Karl

From: Barefoot, Luke A. <lbarefoot@cgsh.com>
Sent: Tuesday, May 12, 2020 7:38 PM
To: Karl Barth <karlb@hbsslaw.com>
Cc: tkessler@cgsh.com <tkessler@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>
Subject: Re: DoubleLine v. Odebrecht

Karl - we understand your position in principle. We are just asking to see the jury instruction you propose to ask the court to enter so we can determine whether we can work this out consensually. Can you kindly send us what you propose so we can progress on our end discussions with our client to try to resolve the request now teed up by your pre motion letter? Again we don't dispute the facts admitted in our pleas with the relevant governments, but to assess do need to understand the exact terms of what you are now proposing.

And though we are disappointed in your decision not to now engage in discussions on our stipulation proposal, we appreciate the clarification as on our call on Friday you indicated we should have expected a mark-up by Monday. Always a bit surprising when your adversary says they aren't interested in your agreement not to contest facts or plaintiffs' burden but we tried!

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On May 12, 2020, at 10:13 PM, Karl Barth <karlb@hbsslaw.com> wrote:

Luke:

As set forth in our letter to Judge Moses, and in my email to you yesterday, we plan on moving the Court for an Order that the jury should presume that the intentionally destroyed evidence would have been unfavorable to the Defendants.

If the Court agrees, the jury will use that inference in making various findings of fact related to the elements of our claims.

I also want to clarify our position regarding the stipulation that your client has proposed. We have no interest at all in that stipulation, which we do not believe was made as a good-faith effort to resolve this situation. Just making minor tweaks in it is just going to be a waste of your time. Your client has intentionally destroyed the key evidence in this case and my client is not going to agree to anything that does not put it in at least as good a position as if your client had not destroyed this evidence in an effort to evade responsibility for its misconduct.

Thanks,

Karl

From: Barefoot, Luke A. <lbarefoot@cgsh.com>
Sent: Tuesday, May 12, 2020 4:12 PM
To: Karl Barth <karlb@hbsslaw.com>
Cc: tkessler@cgsh.com <tkessler@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>
Subject: RE: DoubleLine v. Odebrecht

Hi Karl – we see that you have proceeded to file your letter. As we indicated, we remain interested in trying to resolve this without burdening the court (particularly where we have not and will not contest the admissions you rely on from the statement of facts). To help us progress our discussions with our client, can you send us the terms of the proposed adverse interest instruction you seek? We'd just like to understand the exact scope of what you'll be asking the court for, with a view to discussing whether we can reach agreement.

Look forward to hearing from you.

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From: Karl Barth <karlb@hbsslaw.com>
Sent: Monday, May 11, 2020 9:40 PM
To: Barefoot, Luke A. <lbarefoot@cgsh.com>
Cc: Kessler, Thomas <tkessler@cgsh.com>; Hou, Victor L. <vhou@cgsh.com>
Subject: Re: DoubleLine v. Odebrecht

Luke:

My point in this was not to start a debate about the merits of your motion. You are certainly entitled to file an opposition on these points.

Neither did I intend to encourage a defense critique of my compliance with the Court's rules. If you think that we have violated the Court's rules, you should make your proposed arguments. But I will point out to you that we have been going around on Plaintiffs' First RFPs for months, and Defendants served responses that plainly did not comply with the Federal Rules, were filled with questionable objections and culminated in the the absolute refusal of your convicted-felon client to produce even a single document related to its fraud. Not a peep was mentioned about about your client's destruction of all documents during the relevant period in this case for the past several months while you tried to force an absurd stipulation on my client after we expressly and clearly told you that we would not agree to a stipulation riddled with defenses and outs.

I don't want these conversations to degenerate at this point, but I am not going to listen to critiques of our compliance with rules -- particularly given your client's conduct. I might suggest that if you are looking for more time to respond, idle threats might not be the best strategy.

From: Barefoot, Luke A. <lbarefoot@cgsh.com>
Sent: Monday, May 11, 2020 6:23 PM
To: Karl Barth <karlb@hbsslaw.com>
Cc: tkessler@cgsh.com <tkessler@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>
Subject: Re: DoubleLine v. Odebrecht

Karl - your response suggests you have a predetermined intention to file this and no intention to meet and confer in our legitimate efforts to resolve this proposed motion that we first learned of a few hours ago. At no point did any of our

communications suggest an impasse or that we intend to do anything other than what I said after we learned of your planned motion three hours ago — discuss this issue with our clients and come back to you with a proposal that fully recognizes the implications for this case of the binding admissions in the statement of facts. We genuinely understand and appreciate your arguments and the prospect that this could potentially narrow or moot other potential discovery disputes, and we welcome the opportunity to explore a tailored agreement on the issue you first raised this evening.

We can't prevent you from filing your pre-motion letter but would like a reasonable opportunity to try to discuss and seek to resolve it. If you feel you need to file within hours before we have a chance to do that, we reserve the right to make the court aware of our position that this is premature.

We'll revert as soon as we can. We appreciate the courtesy of apprising us of this motion and aim to stay in contact on progress. We'd would request the same.

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> On May 11, 2020, at 9:06 PM, Karl Barth <karlb@hbsslaw.com> wrote:
>
> Luke:
>
> Thanks for your response and I appreciate your efforts to resolve this issue. However, I think that we are at am impasse that requires Court assistance. Your response highlights exactly why we are not going to get any kind of an agreement. As I keep saying, our case is far broader and stronger than the stipulated facts in Odebrecht's criminal case. We are fully entitled to prove ***our*** case, not just the limited facts the government agreed to as part of a plea agreement. Your client's position for the past several months is that they will stipulate only to the Statement of Facts, and nothing more. But this really is an offer of exactly nothing, because the Statement of Facts and the Plea Agreement already contain a clause that the Statement of Facts cannot be contested in any other proceeding.
>
> We are entitled to all of the evidence regarding our broader and stronger case, but the MyWebDay evidence has been destroyed by your client for the express reason of preventing regulators and investors from using it. I have no doubt that the destroyed

evidence would have proven most of the elements of our claim conclusively, and we are not willing to stipulate to anything that does not put my client in at least a good a position as it would have been had your clients not destroyed this evidence.

Given your client's position that is bears no responsibility for this spoliation, I do not see this being resolved without Court intervention.

Thanks,

Karl

From: Barefoot, Luke A. <lbarefoot@cgsh.com>
Sent: Monday, May 11, 2020 5:49 PM
To: Karl Barth <karlb@hbsslaw.com>; tkessler@cgsh.com <tkessler@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>
Subject: RE: DoubleLine v. Odebrecht

Karl – we appreciate you raising these issues with us this evening and informing us then of your intentions. Let us discuss with our client and come back to you, as there may not be a need for court intervention (as we have made clear, we will not contest the factual points in the statement of facts in our plea agreement) and we hope to come back to you as soon as we can in that regard. We'll move as quickly as we can and will keep you apprised.

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From: Karl Barth <karlb@hbsslaw.com>
Sent: Monday, May 11, 2020 8:35 PM
To: Barefoot, Luke A. <lbarefoot@cgsh.com>; Kessler, Thomas <tkessler@cgsh.com>; Hou, Victor L. <vhou@cgsh.com>
Subject: Re: DoubleLine v. Odebrecht

Of course. I am not trying to be evasive. The Court has great latitude to assess whatever sanction it sees fit, up to and including a default judgment. I can't be completely certain exactly what sanction the Court will decide is appropriate. As we currently understand the facts, we will likely request a proposed very presumption, such as an instruction that the jury should presume

that the intentionally destroyed evidence would have been unfavorable to the Defendants.

The jury would then apply this presumption in making specific findings of fact regarding the various elements of Plaintiffs' claims. I understand that this would not be pleasant for your client, but such is the price of destroying evidence.

We are not going to agree to the stipulation that has been provided, or anything remotely resembling it. We believe that this presumption, if Ordered by the Court, will not leave much room for defenses on many of the elements of Plaintiffs' claims. So any such agreement would have to include unequivocal admissions of many of the elements of plaintiffs' claims, without the outs and qualifying language that exist throughout the current proposal.

Karl

From: Barefoot, Luke A. <lbarefoot@cgsh.com>
Sent: Monday, May 11, 2020 5:14 PM
To: Karl Barth <karlb@hbsslaw.com>; tkessler@cgsh.com <tkessler@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>
Subject: RE: DoubleLine v. Odebrecht

We understand your general perspective Karl – but to sooth out whether we actually have a disagreement given the admissions in the statement of facts (that we cannot and will not dispute), do you have an actual proposed jury instruction that we can review and consider? We can potentially understand your position in certain respects but in other respects – for example how the actions admitted in the state of facts are relevant to plaintiffs' reliance – we are less clear on. If you can provide us with what you would ultimately ask the court for in terms of a jury instruction/scope of inference, we very well might be able to resolve this without the need to involve the court – and in any event consistent with our obligations should try. You'll ultimately have to propose the details in your motion (if not before), so we think it would be productive and consistent with our obligations to meet and confer to try to see if we can reach agreement.

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From: Karl Barth <karlb@hbsslaw.com>
Sent: Monday, May 11, 2020 8:10 PM

To: Kessler, Thomas <tkessler@cgsh.com>; Hou, Victor L. <vhou@cgsh.com>; Barefoot, Luke A. <lbarefoot@cgsh.com>
Subject: Re: DoubleLine v. Odebrecht

Tom:

We believe that the inference is broader than just a few specific findings of fact. The inference that the destroyed evidence would have been adverse to Defendants will be relevant to the jury's determination of numerous factual issues at trial, including, for example, issues related to whether false statements were made; the materiality of the false statements; the scienter of the defendants; loss causation issues; and reliance issues with respect to Plaintiffs 10(b) claims, and numerous other factual issues related to the elements of Plaintiffs' other claims.

Karl

From: Kessler, Thomas <tkessler@cgsh.com>
Sent: Monday, May 11, 2020 3:43 PM
To: Karl Barth <karlb@hbsslaw.com>; vhou@cgsh.com <vhou@cgsh.com>; lbarefoot@cgsh.com <lbarefoot@cgsh.com>
Subject: RE: DoubleLine v. Odebrecht

Thanks, Karl. To the extent there is a proposed jury instruction you would seek to have the Court approve, or some other language that makes clear the exact inference that Plaintiffs are seeking, it would be helpful to see that as we discuss whether there is a way to resolve this issue without court intervention.

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Pronouns: he/him/his

From: Karl Barth [mailto:karlb@hbsslaw.com]
Sent: Monday, May 11, 2020 6:34 PM
To: Kessler, Thomas <tkessler@cgsh.com>; Hou, Victor L. <vhou@cgsh.com>; Barefoot, Luke A. <lbarefoot@cgsh.com>
Subject: DoubleLine v. Odebrecht

Counsel:

As discussed, attached is a draft of the letter we are planning on sending to Judge Moses.

Karl Barth

Karl Barth | Of Counsel
Hagens Berman Sobol Shapiro LLP
1301 Second Avenue, Suite 2000 - Seattle, WA 98101
Direct: (206) 268-9313
KarlB@hbsslaw.com | www.hbsslaw.com

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Exhibit B

Kessler, Thomas

From: Kessler, Thomas
Sent: Friday, May 8, 2020 7:48 PM
To: Karl Barth
Cc: Barefoot, Luke A.; Hou, Victor L.; steve@hbsslaw.com; jasonz@hbsslaw.com; McDonald, Mark E.
Subject: RE: Doubleline v. Odebrecht

Karl,

Thanks again for your time today. As promised, below is a list of the various action items we discussed today regarding the parties' requests for production. As a general matter, we understand you will be following up with us on Monday regarding various items listed below.

Plaintiffs' Responses and Objections to Defendants' First Set of Requests for Production of Documents

Plaintiffs' Proposed Initial Production

We appreciate your update that Plaintiffs have pulled together certain materials for production, which we understand to include certain hard copy files as well as select electronic communications. We look forward to your promised update regarding (i) what electronic communications the production purports to include and (ii) how those communications were collected.

Defendants' Proposed Search Terms

We look forward to your response to our proposed search terms initially provided on February 26, 2020.

Document Retention Policy

We look forward to your response regarding our questions concerning whether Plaintiffs have a document retention policy that applied during the relevant period, and if so, the details of such policy.

Request Nos. 15-16

You agreed to identify for us which companies from the issuer list we provided on February 26 which you believe are not relevant, and we look forward to your response, which we will consider.

Request No. 32

We look forward to your response regarding whether Plaintiffs have any existing organizational or structural charts.

Proposed Search Terms for Plaintiffs' Requests for Production

As we discussed, we believe it would be most productive for Plaintiffs to propose search terms that could be applied to satisfy certain of Plaintiffs' requests for production, including identification of which requests would be satisfied by that application. We look forward to such a proposal.

Potential Stipulation Regarding Perceived Factual Disputes

We look forward to your proposed revisions to our discussion draft stipulation regarding the perceived factual dispute on the volume of bribes, initially provided on March 17.

Thomas S. Kessler
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tkessler@cgsh.com | clearygottlieb.com
Pronouns: he/him/his

From: Kessler, Thomas
Sent: Wednesday, May 6, 2020 8:05 PM
To: Karl Barth <karlb@hbsslaw.com>
Cc: Barefoot, Luke A. <lbarefoot@cgsh.com>; Hou, Victor L. <vhou@cgsh.com>; steve@hbsslaw.com; jasonz@hbsslaw.com; McDonald, Mark E. <memcdonald@cgsh.com>
Subject: Re: Doubleline v. Odebrecht

Thanks, Karl. 2PM (ET) works for us. We can send a dial-in.

Thomas S. Kessler
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On May 6, 2020, at 4:19 PM, Karl Barth <karlb@hbsslaw.com> wrote:

Tom:

Any time Friday is fine.

Karl

From: Kessler, Thomas <tkessler@cgsh.com>
Sent: Monday, May 4, 2020 9:57:45 AM
To: Karl Barth <karlb@hbsslaw.com>; lbarefoot@cgsh.com <lbarefoot@cgsh.com>; vhou@cgsh.com <vhou@cgsh.com>; Steve Berman <Steve@hbsslaw.com>; Jason Zweig <jasonz@hbsslaw.com>
Cc: memcdonald@cgsh.com <memcdonald@cgsh.com>
Subject: RE: Doubleline v. Odebrecht

Karl,

We are generally available on Friday afternoon. Please let us know what times might be good for you and we can circulate a dial-in.

Relatedly, as we have previously mentioned, on our next meet and confer, there are a number of issues that we would like to discuss regarding our requests for production. They are outlined in my email of March 17 (which followed up on our meet and confer of February 28). I am reattaching that email here for convenience.

In short, we would like to follow up on:

- The number of documents responsive to our previously proposed search terms for custodians in the categories we discussed and I identified in my March 17 email;
- Plaintiffs' position with respect to the proposal that Plaintiff produce documents sufficient to identify holdings of and transactions in securities issued by the companies on the issuers list attached to my emails of February 26 and March 17;
- Whether Plaintiffs have organizational charts or similar documents with respect to custodians in the categories we discussed and I identified in my March 17 email;
- The details of Plaintiffs' document retention policies;
- Plaintiffs' position regarding our discussion draft of a stipulation regarding the volume of bribes which, subject to our agreement on the framework, could serve as a model for other perceived factual disputes.

We look forward to discussing.

Best,
Tom

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From: Karl Barth [mailto:karlb@hbsslaw.com]
Sent: Friday, May 1, 2020 5:37 PM
To: Barefoot, Luke A. <lbarefoot@cgsh.com>; Hou, Victor L. <vhou@cgsh.com>; steve@hbsslaw.com; jasonz@hbsslaw.com
Cc: McDonald, Mark E. <memcdonald@cgsh.com>; Kessler, Thomas <tkessler@cgsh.com>
Subject: Re: Doubleline v. Odebrecht

Thanks Luke:

Also, can we get another meet and confer call on the schedule for next week? We need to press forward on these issues given the discovery time constraints.

Thanks,

Karl

Exhibit C

DISCUSSION DRAFT – SUBJECT TO FRE 408 AND ALL RULES OF SIMILAR IMPORT
CGSH DRAFT 3-17-20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOUBLELINE CAPITAL LP; DOUBLELINE INCOME SOLUTIONS FUND; and DOUBLELINE FUNDS TRUST (on behalf of its: 1) DOUBLELINE CORE FIXED INCOME FUND SERIES; 2) DOUBLELINE EMERGING MARKETS FIXED INCOME FUND SERIES; and 3) DOUBLELINE SHILLER ENHANCED CAPE® SERIES), Plaintiffs, -against- CONSTRUTORA NORBERTO ODEBRECHT, S.A.; ODEBRECHT ENGENHARIA E CONSTRUÇÃO S.A. and ODEBRECHT, S.A., Defendants.	Case No: 1:17-cv-4576-GHW

STIPULATION AND AGREED ORDER

Plaintiffs DoubleLine Capital LP, DoubleLine Income Solutions Fund, and DoubleLine Funds Trust o/b/o DoubleLine Core Fixed Income Fund Series, DoubleLine Emerging Markets Fixed Income Fund Series, and DoubleLine Shiller Enhanced Cape Series (together, "Plaintiffs") and Defendants Construtora Norberto Odebrecht S.A., Odebrecht Engeharia e Construção S.A., and Odebrecht S.A.—*em Recuperação Judicial* ("Odebrecht" and, together with the defendants in above-captioned action, "Defendants" and, together with the Plaintiffs, the "Parties") by and through their respective undersigned counsel, state as follows:

WHEREAS, on June 16, 2017, Plaintiffs commenced the above-captioned civil action (the "Action");

WHEREAS, Plaintiffs' claims against Defendants in the Action are asserted in Plaintiffs' Third Amended Complaint (ECF No. 61) (the "TAC"), to the extent not dismissed by this Court's September 22, 2019 memorandum opinion and order (ECF No. 81);

WHEREAS, in addition to certain other leniency or plea agreements entered into with foreign authorities, Odebrecht entered into a Rule 11 Plea Agreement with the United States of America, filed in the action *United States v. Odebrecht S.A.*, No. 16-cr-643 (E.D.N.Y.), which filed a Statement of Facts as Exhibit 1, Attachment B (the "Statement of Facts");

WHEREAS, in the Statement of Facts, Odebrecht admitted, among other things, that "Odebrecht, together with its co-conspirators, paid approximately $788 million in bribes" in association with certain projects between 2001 and 2016 (the "Relevant Period");

WHEREAS, Plaintiffs allege, among other things, that Defendants CNO and Odebrecht made bribe payments in connection with certain projects "encompassing $3.3 billion" from 2006 through 2014;[1] and

WHEREAS, the Parties agree that execution and approval of this stipulation (the "Stipulation") will eliminate, subject to the procedures outlined below, the need for discovery into the precise quantity of bribe payments made by or on Defendants' behalf in association with certain projects during the Relevant Period (the "Bribe Payments");

IT IS HEREBY STIPULATED, AGREED AND SO ORDERED, that:

1. Defendants shall not raise any claim or defense in the Action, or otherwise assert that any element of any claim asserted in the TAC is not satisfied, on the basis that the total amount of Bribe Payments was any amount less than $3.3 billion;

[1] *See, e.g.*, Third Am. Compl., *DoubleLine Capital LP, et. al. v. Odebrecht Finance, Ltd., et. al.*, No. 1:17-cv-04576-GHW-BCM (S.D.N.Y. 2017), ¶ 11.

2. Plaintiffs shall not be required to establish, in order to satisfy any element of any claim asserted in the TAC, that the total amount of Bribe Payments was any amount more than $788 million;

3. Nothing in this Stipulation shall be deemed as an admission by Defendants that the total amount of Bribe Payments exceeds $788 million;

4. Nothing in this Stipulation shall be deemed as an admission by Plaintiffs that the total amount of Bribe Payments is any amount less than $3.3 billion; and

5. To the extent that Plaintiffs subsequently determine in the course of discovery that they reasonably require documents, testimony, or other discovery regarding the total amount of Bribe Payments in order to establish any claim or respond to any defense asserted by Defendants, they will raise such determination with Defendants and the Parties will meet and confer. To the extent that the Parties, following good faith efforts, are unable to reach agreement on such a subsequent request, such dispute shall be resolved by the Court.

6. Except as otherwise set forth in this Stipulation, all Parties expressly reserve all rights and defenses in connection with the Action.

Dated: [[●]]
New York, New York

By: */s/ DRAFT*
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Attorneys for Defendants.

SO ORDERED.

HON. GREGORY H. WOODS
United States District Judge

Dated:_____