UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE STAR GAS SECURITIES LITIGATION	:	**No. 3:04cv1766 (JBA)**

RULING ON MOTIONS FOR APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL [DOCS. ## 20, 27, 32, 38, 52, 58, 74, 76, 96, 122, 123]

Before the Court are seventeen consolidated class action lawsuits against Star Gas Partners, LP (Star Gas), a Connecticut-based energy firm, and two individual defendants. Seven groups and one individual have moved to be appointed lead plaintiff and for their attorneys to be appointed lead counsel.[1] Oral argument on these motions was held on February 23, 2005, with requested supplemental briefing filed thereafter. For the reasons discussed below, the Court will appoint as co-lead plaintiffs John E. Wertin, RS Holdings LLC, and James Rosner. The law firms of Goodkind Labaton Rudoff & Sucharow and Schiffrin & Barroway will be appointed as co-lead counsel, and Shepherd Finkelman Miller & Shah will be appointed as local counsel.

I. Factual Background

All complaints filed against Star Gas contain similar

[1]These are the RS Holdings Group, Star Gas Group, Bell Group, James Rosner, Voisin Family Group, Dombrowsky Group, Vandiver Group, and Star Gas Investor Group. Three others withdrew their lead plaintiff motions: the Lando Group, Franklin Family Group, and James White.

claims, differing materially only as to class period. Each action alleges that the defendants violated Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, by issuing a series of material misrepresentations to the market related to Star Gas's financial condition during the class period and thereby artificially inflating the price of Star Gas stock, which crashed when the true financial condition became public.

The complaints state that Star Gas is a diversified home energy distributor and services provider that specializes in heating oil, propane, natural gas and electricity. It is a "master limited partnership" whose stock trades over the New York Stock Exchange. Star Gas depends heavily on financing because it purchases supplies before receiving payment from customers. Therefore, plaintiffs allege, Star Gas's compliance with the terms of its lending agreements is critical to its continued operations.

Beginning in 2000, Star Gas greatly expanded its operations by acquiring other companies, and issued a series of announcements reporting increases in operating efficiency, sales and customers as a result of these acquisitions. The plaintiffs allege that Star Gas did not have the infrastructure necessary to handle the new customers it gained through the transactions, leading to customer attrition. In 2003, Star Gas reorganized its

heating oil operations, including consolidating service stations, decreasing the number of oil delivery management offices, and implementing a centralized call center. However, the company experienced serious problems in its reorganization, including poor customer service, loss of customers, operating deficiencies, and limited cost saving. As a result, the company's business deteriorated. The plaintiffs allege that the company failed to disclose its financial circumstances to investors, and therefore Star Gas stock was artificially inflated at the time the class members purchased it. The individual defendants allegedly were motivated to artificially inflate Star Gas stock in order to complete several securities offerings, which generated $96 million in proceeds during the class period.

On October 18, 2004, Star Gas announced that its Petro division experienced a substantial decline in earnings in fiscal 2004, and that further decline was expected in 2005, which would not permit it to meet required borrowing conditions. The company stated on that date that it was in talks with its lenders to modify the terms of the loans, but that it might be "forced to seek interim financing on extremely disadvantageous terms or even seek to restructure its debts under the protection of bankruptcy courts." Following this announcement, the price of Star Gas common stock dropped 80%, from $21.60 on October 15, 2004, to $4.32 on October 18, 2004.

All complaints conclude the proposed class period as of October 18, 2004. Eight complaints, including the first filed, commence the class period on December 4, 2003. Three complaints begin the class period on April 20, 2003, and six complaints begin the class period on July 25, 2000.

II. Private Securities Litigation Reform Act

The Private Securities Litigation Reform Act ("PSLRA") of 1995, 15 U.S.C. § 77z-1, was designed to end the "race to the courthouse" by plaintiffs' lawyers and "encourage the most capable representatives of the plaintiff class to participate in class action litigation and to exercise supervision and control of the lawyers for the class." H.R. Conf. Rep. 104-369, at 34, reprinted in 1995 U.S.C.C.A.N. 730, 733. Specifically, the law was "intended to increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." Id.

To these ends, the statute prescribes detailed procedures to be followed in the initial stages of securities class action cases. First, the plaintiff in the earliest-filed case must publish notice in "a widely circulated national business-oriented publication or wire service" regarding "the pendency of the action, the claims asserted therein, and the purported class

period..." 15 U.S.C. § 77z-1(a)(3)(A)(i)-(ii). Attorneys for the plaintiff in the first-filed Star Gas matter, Carter v. Star Gas, 3:04cv1766, published such a notice on the Primezone service on October 21, 2004, and therefore this element is not contested here.

Second, where there are several actions pending and there is a motion to consolidate, the court must decide that motion. 15 U.S.C. § 77z-1(a)(3)(B)(ii). This Court granted the motions to consolidate the seventeen Star Gas cases from the bench at the February 23, 2005 hearing, see Tr. [doc. #118] at 9-10, followed by a written consolidation order [doc. #95].

Third, "[a]s soon as practicable after such [consolidation] decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions..." Id. § 77z-1(a)(3)(B)(ii). To serve as lead plaintiff, the movant must file a sworn certified statement with the complaint stating that he or she reviewed and authorized the filing of the complaint; did not purchase the securities at the direction of counsel or in order to participate in a lawsuit; and is willing to serve as the lead plaintiff on behalf of the class. The plaintiff must also identify any of his or her transactions in the securities covered by the class period, and any other lawsuits in which the plaintiff has sought to serve as lead plaintiff in the last three years. All proposed lead plaintiffs

have filed such statements in the Star Gas cases, and the adequacy of the certifications is not at issue.

In determining the "most adequate plaintiff," the statute creates a presumption in favor of "the person or group of persons that: -- (aa) has either filed the complaint or made a motion [to be the lead plaintiff]; (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." Id. § 77z-1(a)(3)(B)(iii)(I). This presumption "may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff -- (aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class." Id. § 77z-1(a)(3)(B)(iii)(II).

As the Ninth Circuit explained, in choosing the most adequate plaintiff,

> the district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit. It must then focus its attention on that plaintiff and determine, based on the information he has provided in his pleadings and declarations, whether he satisfies the requirements of Rule 23(a), in particular those of 'typicality' and 'adequacy.' If the plaintiff with the largest financial stake in the controversy provides information that satisfies these requirements, he becomes the presumptively most adequate plaintiff. If the plaintiff with the greatest financial stake does not satisfy the

> Rule 23(a) criteria, the court must repeat the inquiry, this time considering the plaintiff with the next-largest financial stake, until it finds a plaintiff who is both willing to serve and satisfies the requirements of Rule 23.

In re Cavanaugh, 306 F.3d 726, 730 (9th Cir. 2002). In other words, the Court should not undertake a comprehensive review of all the lead plaintiff motions at once. Rather, the Court should consider the motions sequentially, from greatest to smallest loss, applying the presumption that the plaintiff with the greatest loss should be the lead plaintiff, unless and until that presumption is rebutted by a showing that that plaintiff does not meet the Rule 23 criteria. Id. at 732.

Of the four Rule 23 requirements -- numerosity, commonality, adequacy, and typicality -- only adequacy and typicality come into play when determining a lead plaintiff under the PSLRA. Constance Sczesny Trust v. KPMG, LLP, 223 F.R.D. 319, 324 (S.D.N.Y. 2004), In re Oxford Health Plans, Inc., Sec. Litig., 182 F.R.D. 42, 50 (S.D.N.Y. 1998), appeal dismissed sub nom. Metro Servs. Inc. v. Wiggins, 158 F.3d 162 (2d Cir. 1998). In the Second Circuit, the tests for adequacy and typicality are the same under the PSLRA as in any class action. See Hevesi v. Citigroup Inc., 366 F.3d 70, 83 (2d Cir. 2004) ("there is no reason to believe that the PSLRA altered the preexisting standard by which class representatives are evaluated under Rule 23.").

Once a lead plaintiff is chosen, the PSLRA requires that the

"most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class." 15 U.S.C. § 77z-1(a)(3)(B)(v). Under this provision, "the court's role is generally limited to 'approv[ing] or disapprov[ing] lead plaintiff's choice of counsel;' and ... it is not the court's responsibility to make that choice itself. ... [T]he court should generally employ a deferential standard in reviewing the lead plaintiff's choices." In re Cendant Corp. Litig., 264 F.3d 201, 274 (3d Cir. 2001) (quoting H.R. Conf. Rep. No. 104-369, at 35, reprinted in 1995 U.S.C.C.A.N. 730, 734).

III. Discussion

A. Appointment of Lead Plaintiff

1. Groups Seeking Lead Plaintiff Status

The "RS Holdings Group" asserts the largest financial interest in the case, claiming $1,796,978.00 in combined losses between July 25, 2000 and October 18, 2004. The group consists of an institutional investor, Robino Stortini Holdings, LLC ("RS Holdings"), which lost approximately $749,000, an individual investor named John E. Wertin who lost approximately $800,000, and Harold D. Dumm, who lost approximately $241,000. There is no preexisting relationship among the members of this group.

The second-largest losses are claimed by the four individual members of the "Star Gas Group," who assert aggregate losses of $905,222, but none of whose members lost more than about

$298,000, and who also claim no preexisting relationship. The third-largest losses are claimed by the five members of the "Bell Group," with total losses of $719,000, but no single loss larger than approximately $382,000.

Next in line in decreasing size of loss are individual investor James Rosner, who claims losses of $590,000; the Voisin Family, consisting of a husband and wife, the husband's daughter, and the wife's two minor grandchildren, who assert total losses of approximately $477,000; the Dombrowsky Group, made up of three unrelated individuals, asserting losses of approximately $254,000; the Vandiver Group, consisting of three married couples and one individual, which asserts losses of $245,000; and the Star Gas Investor Group, consisting of one couple and four individuals, who claim losses of $205,000.

2. Method of Choosing Lead Plaintiff

The PSLRA provides that the "most adequate plaintiff" may be either a "person or group of persons." 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I). Courts have divided over whether a group of unrelated investors is the type of "group of persons" permitted to serve as lead plaintiff, with some courts taking the position that the PSLRA "forbids aggregation of unrelated plaintiffs," Aronson v. McKesson HBOC, Inc., 79 F. Supp. 2d 1146, 1153 (N.D. Cal. 1999); In re Donnkenny Inc. Sec. Litig., 171 F.R.D. 156, 157-58 (S.D.N.Y. 1997), and other courts accepting a proposed

lead plaintiff grouping without scrutiny, see, e.g., In re Olsten Corp. Securities Litigation, 3 F. Supp. 2d 286, 296 (E.D.N.Y. 1998).

The majority of courts considering the issue have taken an intermediate position, allowing a group of unrelated investors to serve as lead plaintiffs when it would be most beneficial to the class under the circumstances of a given case, but selecting only a few lead plaintiffs from within a larger group proposed by counsel. See, e.g., In re Baan Co. Sec. Litig., 186 F.R.D. 214, 217 (D.D.C. 1999), Oxford Health Plans, 182 F.R.D. at 46. For instance, the court in Oxford, 182 F.R.D. at 46, appointed as co-lead plaintiffs a state employees pension fund, a group of three individual investors culled from a proposed group of 35, and a fund management company.[2]

In this case, the Court concludes that an intermediate approach best serves the interests of the class because the current groupings reflect significant variation in the amounts of the constituent lead plaintiffs' losses. Among the lead plaintiffs put forward, no one plaintiff stands out as an obvious choice to be a single lead plaintiff. There are, however, three proposed lead plaintiffs with by far the largest financial

[2]The Securities and Exchange Commission takes the position that a group of no more than three to five investors should be appointed as lead plaintiffs, to ensure that the plaintiffs are able to maintain control of the litigation. See Baan, 186 F.R.D. at 216-17.

interest in the case, all of whom have unique attributes: John Wertin, the individual with the largest losses; RS Holdings, the only institutional investor and the plaintiff with the second-largest losses; and James Rosner, the plaintiff with the third-largest losses and the largest losses stemming from stock purchases early in the class period. As discussed more fully below, Wertin, RS Holdings, and Rosner will be appointed as the most adequate co-lead plaintiffs.[3]

3. John E. Wertin

The presumptive lead plaintiff is John E. Wertin, an individual investor who claims approximately $800,000 in losses from Star Gas stock purchased between February 2003 and October 1, 2004. Although the Lando Group challenged Wertin's adequacy as lead plaintiff on the ground that he had used settlement date prices rather than trade date prices to calculate his losses, see Lando Group Mem. in Opp. at 10-11, Wertin addressed that issue in his Reply, his Supplemental Memorandum, and at the February 23 hearing, representing that only one settlement price was used,

[3]Although the Voisin Family group argues that they are the most adequate plaintiff because they are the only group with a preexisting relationship, this argument does not outweigh the PSLRA's directive to appoint as lead plaintiff the individual or group with the largest financial interest in the case. The Voisins collectively lost less than $477,000, placing them behind the three other plaintiffs with larger losses. Their concern that the PSLRA does not condone lawyer-driven aggregations is ameliorated by the fact that the Court is creating the lead plaintiff group rather than accepting any of the prefabricated groups of unrelated individuals that were proposed.

and that that error in fact caused an understatement of his losses. See Reply Mem. of RS Holdings [doc. #82] at 3, Supp. Mem. of RS Holdings Group at 7. Thus the Court is satisfied that Wertin has suffered losses of at least $800,000, the largest of all proposed lead plaintiffs.

Despite the assertion of the Dombrowsky Group, see Dombrowsky Mem. of Law in Further Support [doc. #65] at 2-3, there is no evidence that Wertin is an "in and out trader," i.e., that he bought and sold all his Star Gas shares within the class period, creating a situation where he may have suffered no losses or negligible losses that are difficult to determine. Wertin's certification indicates that he sold his Star Gas shares on October 18 and 19, 2004, at the end of the class period and after the price of Star Gas stock collapsed. See RS Group Mem. of Law [doc. #33] at Ex. A.

Wertin will adequately represent the plaintiff class. He states that he is a graduate of the Naval Academy and Stanford Business School. Second Joint Decl., RS Group Reply Mem. [doc. #82], Ex. C, ¶ 5. He further states that "[a]s a former real estate developer, [he] routinely was responsible for overseeing large projects and ... frequently worked with attorneys." Id. Finally, he states that he is committed to "monitoring" lead counsel and actively participating in the case as lead plaintiff. First Joint Decl., RS Group Reply Mem. [doc. #82], Ex. A, ¶ 8.

Thus the Court will appoint Wertin as a co-lead plaintiff in this case.

4. RS Holdings LLC

RS Holdings LLC claims losses of about $749,000 on stock purchased between November 2003 and October 2004, giving it the second-largest losses of the proposed lead plaintiffs. See Mem. of Law in Support of Mot. of RS Holdings Group [doc. #33] at Ex. A. RS Holdings is the only institutional investor to request lead plaintiff status, and Congress in passing the PSLRA specifically intended "to increase the likelihood that institutional investors will serve as lead plaintiffs" because it "believe[d] that increasing the role of institutional investors in class actions [would] ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions." H.R. Conf. Rep. 104-369, at 34, reprinted in 1995 U.S.C.C.A.N. 730, 733.

Some plaintiffs have opposed the appointment of RS Holdings on the ground that it may not have standing to assert a claim on its own behalf nor authority to pursue claims on behalf of its clients. Only purchasers and sellers of securities have standing to assert claims for money damages under § 10 of the Exchange Act of 1934. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975). In a reply affidavit, Michael Storini states that "[a]ll of the Star Gas ... common stock purchased during the Class

Period by RS Holdings is held in its name alone, and RS Holdings has full authority to bring this action in connection with damages to its shares for securities violations alleged in the complaint. RS Holdings is not an asset manager, money manager or broker dealer, which typically purchase the stock for the accounts of its customers." Joint Decl. of RS Holdings Group, Reply Mem. of Law [doc. #82], Ex. A, ¶ 3. In answer to further concerns about his individual standing, Storini, who signed the required certification on behalf of RS Holdings, states that he is "the managing member of RS Holdings and ha[s] full and complete authority to file suit on behalf of RS Holdings." Id. Thus RS Holdings has standing as a purchaser of Star Gas stock, with Michael Storini as an appropriate representative, and the Court finds that RS Holdings would be an adequate representative of the class as a co-lead plaintiff.[4]

5. James C. Rosner

James C. Rosner as trustee of the James C. Rosner Revocable Trust claims the third-largest financial interest in the case, having suffered losses of approximately $590,000 on Star Gas

[4]Also a member of the proposed "RS Holdings Group" is Harold D. Dumm, with losses of approximately $242,000. As stated at oral argument, Dumm has no preexisting relationship with Wertin or RS Holdings. His losses are smaller than six other movants (RS Holdings, Wertin, James Rosner, Brian Johnson, Louis Jones, and Lawrence Bell). Therefore although Dumm moved jointly with Wertin and RS Holdings, he will not be selected as a lead plaintiff.

stock purchased between August 2000 and August 2002. Supp. Filing in Support of James C. Rosner [doc. #106] at 2, Ex. 1. Rosner is an attorney licensed to practice in the State of Missouri who now focuses his professional efforts on the nursing home business. Rosner Decl. ¶¶ 3, 4. He states that he has acted as Chief Financial Officer of his nursing home company and in this role he has "directed numerous lawyers in a multitude of activities, including real estate, acquisitions, employment issues, and litigation." Id. at ¶ 5.

Also important for present purposes, Rosner purchased Star Gas stock as early as August 2000. The earliest proposed class period dates to July 25, 2000, but the current record indicates that RS Holdings and Wertin did not purchase any Star Gas stock before 2003. Thus it is appropriate to appoint one lead plaintiff who represents purchasers of Star Gas stock during the earlier years of the proposed class period.

The Dombrowsky Group argues that only those who purchased Star Gas stock during the shortest proposed class period (December 4, 2003 - October 18, 2004) should be appointed lead plaintiffs because there is insufficient evidence that Star Gas committed securities fraud before this period, and because the notice published by the first-filing plaintiff was limited to this shorter period. However, it would be premature to limit the plaintiff class in this way at such an early stage of the

litigation. The appointed lead plaintiffs can decide how to frame their amended complaint in terms of an appropriate class period in their best judgment. The ruling on a motion for class certification will determine whether in fact the claims of Star Gas purchasers in the various class periods have require subclasses, or whether each lead plaintiff is representative of the class based on the dates of stock purchases. Finally, the difference between the dates in the notice and the dates of the proposed class period are not determinative of lead plaintiff status, see Cheney v. Cyberguard Corp, 213 F.R.D. 484, 504 (S.D. Fla. 2003), because the purpose of the notice is to encourage potential lead plaintiffs to step forward, as many did in this case, regardless of the dates of their Star Gas stock purchases. At this stage, the Court is to appoint the person or group of persons that will most adequately represent the plaintiff class as presently constituted, and therefore the Court will appoint Rosner as co-lead plaintiff as the most adequate representative of purchasers of Star Gas securities between 2000 and 2003.

6. Typicality of Wertin, RS Holdings and Rosner

There is no dispute that the claims of Wertin, RS Holdings, and Rosner are typical of the proposed class. Typicality exists where the plaintiff's claims arise from the same series of events and are based on the same legal theories as the claims of all the class members. See Rossini v. Ogilvy & Mather, Inc., 798 F.2d

590, 598 (2d Cir. 1986). As discussed supra, § I, except for the class period, the claims in all seventeen consolidated Star Gas complaints are nearly identical. All plaintiffs claim that they purchased Star Gas securities during the class period, paid inflated prices for those securities, and suffered damages. The common legal theory is a breach of Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b) and 78t(a), and Rule 10b-5, based on allegedly false and misleading statements by Star Gas concerning its business success and financial situation during the class period. While the Rule 23 criteria will be more fully analyzed by the Court on a motion for class certification, for present purposes John Wertin, RS Holdings, and James Rosner appear to be adequate and typical representatives of the plaintiff class.

B. Motions for Appointment of Lead Counsel

The Third Circuit has suggested the following criteria for deciding whether to approve the lead plaintiff's choice of counsel:

> (1) the quantum of legal experience and sophistication possessed by the lead plaintiff; (2) the manner in which the lead plaintiff chose what law firms to consider; (3) the process by which the lead plaintiff selected its final choice; (4) the qualifications and experience of counsel selected by the lead plaintiff; and (5) the evidence that the retainer agreement negotiated by the lead plaintiff was (or was not) the product of serious negotiations between the lead plaintiff and the prospective lead counsel.

Cendant, 264 F.3d at 276. However, the PSLRA also "evidences a

strong presumption in favor of approving a properly-selected lead plaintiff's decisions as to counsel selection and counsel retention. When a properly-appointed lead plaintiff asks the court to approve its choice of lead counsel and of a retainer agreement, the question is not whether the court believes that the lead plaintiff could have made a better choice or gotten a better deal." Id.

RS Holdings and John Wertin seek approval of Goodkind Labaton Rudoff & Sucharow LLP of New York City and Schiffrin & Barroway, LLP of Radnor, Pennsylvania as co-lead counsel, and Shepherd Finkelman Miller & Shah, LLC of Chester, Connecticut as local (liaison) counsel. These three firms will be approved as class counsel.[5] At oral argument, Schiffrin & Barroway represented that the firms will divide their work so as not to duplicate efforts, recognizing that duplicative work will not be approved for payment by the Court. Tr. 20-21.

Wertin, a businessman, and RS Holdings, an institutional investor, have substantial sophistication and experience dealing with the legal system and thus are assumed to have selected counsel with appropriate rigor. The two lead firms combined have over fifty years of experience with securities class actions

[5]At oral argument RS Holdings Group stated that Shepherd Finkelman originally was retained by Harold Dumm, who has not been appointed a lead plaintiff. See Tr. 2/23/05 at 18. Because Shepherd Finkelman will serve as local counsel, the Court nonetheless approves selection of the firm.

nationally and are qualified to represent the class. See Firm Biographies, RS Mem. of Law Ex. C.

On March 3, 2005, the Court requested supplemental submissions from all proposed lead counsel concerning fee arrangements.[6] While an attorney fee agreement is not required by statute, it is one factor to consider in deciding whether to approve a lead plaintiff's choice of counsel as in the best interest of the class. Cendant, 264 F.3d at 276. The Goodkind and Schiffrin firms have developed a decreasing sliding scale arrangement with RS Holdings and Wertin, based on the stage of the proceedings at which the case is resolved and the amount of recovery, if any, obtained for the class. This arrangement is consistent with current trends in securities cases in the Second Circuit away from lodestar methodology and toward the percentage method of calculating attorney fees, "which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396

[6]The Court ultimately is responsible for ensuring that any attorneys fees awarded in this case are reasonable. See 15 U.S.C. § 78u-4(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."). Without prejudging the ultimate outcome of any fee petition to be filed in this case, the Court concludes that inquiring into the fee agreement in advance will create an incentive to negotiate a competitive fee arrangement and allow the Court to ensure that the class's interests will be protected from the outset.

F.3d 96, 121 (2d Cir. 2005) (internal quotation and citation omitted). In addition, a decreasing percentage sliding scale method will avoid a windfall for attorneys in relation to class members' recovery. See, e.g., In re Indep. Energy Holdings PLC, No. 00Civ.6689 (SAS), 2003 WL 22244676, at *6 (S.D.N.Y. Sept. 29, 2003) ("the percentage used in calculating any given fee award must follow a sliding-scale and must bear an inverse relationship to the amount of the settlement. Otherwise, those law firms who obtain huge settlements, whether by happenstance or skill, will be over-compensated to the detriment of the class members they represent."). The Goodkind/Schiffrin proposal comports with these requirements.

Therefore, in light of the nature of their fee agreement, and their qualifications to handle a large securities case of this type, the motion of Goodkind Labaton Rudoff & Sucharow and Schiffrin & Barroway to be approved as co-lead counsel, and Shepherd Finkelman Miller & Shah to be approved as local counsel, will be granted.

Lead Plaintiff James Rosner seeks approval of his choice of Green Schaaf & Jacobson of Missouri as lead counsel, James R. Dowd of the firm Dowd & Dowd, also of Missouri, as Of Counsel, and Jacobs, Grudberg, Belt & Dow as local counsel. Rosner's attorneys' response to the Court's March 3 request for supplemental briefing concerning attorney fee arrangements stated

that they "do not have a written agreement with Mr. Rosner regarding [their] attorneys' fees," although they "have considered possible fee structures whereby the percentage fee would be on a declining scale." Supp. Filing [doc. #119] 1-2. At oral argument Attorney Jacobson stated that Rosner is "happy to be lead plaintiff without us being lead counsel." Tr. 59. It does not appear that a committee of six firms is either necessary or beneficial in terms of coordination of effort or avoidance of duplication. For these reasons, the Court disapproves Rosner's choice of class counsel, and as co-lead plaintiff he will be represented by the attorneys for RS Holdings and Wertin.

IV. Conclusion

Accordingly, the motion of the RS Holdings Group [doc. #32] is GRANTED IN PART as to the motion of RS Holdings LLC and John Wertin to be appointed co-lead plaintiffs and for approval of their choice of counsel, and DENIED IN PART as to Harold Dumm's motion to be appointed lead plaintiff. The motion of James Rosner [doc. #20] is GRANTED IN PART to the extent that Rosner is appointed co-lead plaintiff, and DENIED IN PART as to Rosner's choice of counsel. All other pending motions seeking lead plaintiff status [docs. ## 27, 38, 42, 52, 55, 58, 96] are DENIED. The motions of the Bell Group and the Star Gas Group [docs. ## 122, 123] to seal their fee submissions are DENIED AS MOOT. The Voisin Family Group's motion to amend its opposition

papers [docs. ## 74, 76] is GRANTED.

A supplemental scheduling order will issue.

IT IS SO ORDERED.

_____/s/_____
JANET BOND ARTERTON
United States District Judge

Dated at New Haven, Connecticut, this 8th day of April, 2005.