

ANDREWS KURTH LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 850-2800
600 Travis, Ste. 4200
Houston, TX 77002
Telephone: (713) 220-4200

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re: :
REFCO INC., *et al.*, : Chapter 11
: Case No. 05-60006 (RDD)
Debtors. : (Jointly Administered)

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THE OFFICIAL COMMITTEE OF EQUITY :
SECURITY HOLDERS OF REFCO, INC. ON :
BEHALF OF REFCO, INC. and NEW REFCO :
GROUP LTD LLC, :
Plaintiff, :
- against - : Adversary Proceeding No.

PHILLIP R. BENNETT, REFCO GROUP :
HOLDINGS, INC., THOMAS H. LEE PARTNERS, :
L.P., 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 INVESTORS LIMITED :
PARTNERSHIP, GRANT THORNTON LLP, :
LIBERTY CORNER CAPITAL STRATEGIES, :
LIBERTY CORNER CAPITAL, LIBERTY CORNER :
ADVISORS, DAVID V. HARKINS, SCOTT L. :
JAECKEL, THOMAS H. LEE, SCOTT A. SCHOEN, :
LEO R. BREITMAN, NATHAN GANTCHER, and :
RONALD L. O'KELLEY, :
Defendants. :

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Plaintiff, the Official Committee of Equity Security Holders of Refco Inc. (the “Equity Committee”) on behalf of Refco, Inc. (“Refco Inc.”) and New Refco Group Ltd, LLC (“New Refco,” collectively “Refco”), avers as follows:

SUMMARY OF THE PROCEEDING

1. Refco appeared to be a successful brokerage firm. Phillip R. Bennett (“Bennett”) was Refco’s Chief Executive Officer and Chairman. Until August 2004, Bennett or those affiliated with him owned all of Refco. At that time, Bennett sold about 57% of Refco for hundreds of million of dollars to the investing entities for Thomas H. Lee Partners, L.P. (“THL”), and Refco issued bonds and borrowed funds, out of which Bennett or those affiliated with him received hundreds of millions of dollars. Refco Inc. was incorporated and its stock was initially offered to the public on August 10, 2005 (“IPO”). The IPO, like the THL purchase and the indebtedness before it, was successful because Refco appeared to be successful. For Bennett, it certainly had been. Unfortunately, Bennett had concealed from Refco generally, and the public, hundreds of millions of dollars of losses (the “Losses”) in Refco’s financial history. Shortly after this was disclosed, Refco went from successful to bankrupt. Bennett has been indicted and awaits trial.

2. The Losses Bennett failed to disclose were more than just a secret. The Losses were uncollectible amounts owed by Refco customers. Bennett apparently covered the Losses by “loaning” the deficit. To avoid disclosing this insider transaction, Bennett, before each reporting period, would arrange to have a customer hold the debt. He did this by loaning the customer the money, who would then loan Refco that money. The customer would receive more

in interest on the loan to Refco than Bennett would charge the customer, ensuring the customer a profit. Shortly after each reporting period, Bennett would unwind the transaction.

3. As a result of concealing these Losses, Bennett was able to make about \$2 billion. Also as a result, Refco lost nearly all its business, consisting of its operating subsidiaries, which went bankrupt too, valued at about \$3.7 billion. If the Losses had been timely disclosed, Refco would still be in business today.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

5. This is a core proceeding, as that term is defined in 28 U.S.C. § 157(b)(2).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

THE PARTIES

7. Refco Inc., one of the debtors in this case, is a corporation organized under the laws of the State of Delaware that had its principal place of business in New York, New York. Refco Inc. is a publicly held holding company.

8. New Refco, one of the debtors in this case, is a limited liability company organized under the laws of the State of Delaware that had its principal place of business in New York, New York.

9. On October 17, 2005, Refco filed a voluntary petition for relief pursuant to Chapter 11 Title 11 of the United States Code.

10. Bennett was Refco's Chairman, President, and Chief Executive Officer until October 10, 2005. Bennett is a citizen of New Jersey.

11. Refco Group Holdings, Inc. (“Refco Holdings”) is wholly owned by Bennett. Bennett held his Refco ownership through Refco Holdings. Refco Holdings held the Losses as a debt except at the end of reporting periods in which the debt would be transferred to a third party.

12. Grant Thornton LLP (“Grant Thornton”) was Refco’s outside auditor.

13. Liberty Corner Capital Strategies, Liberty Corner Capital, and Liberty Corner Advisors (“Liberty Corner”) are controlled by Terry Pigott (“Pigott”), a friend of Bennett. Liberty Corner was the contracting party with Refco Holdings in at least many of the transactions that papered the debt concealing the Losses as not being owed from an insider.

14. THL was the largest shareholder of Refco and held about 42% of Refco’s outstanding common shares. THL invested through various entities and controlled Refco through the THL-affiliated directors identified below. Thomas H. Lee Partners, L.P. is the parent entity. The THL investing entities include 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., and Thomas H. Lee Investors Limited Partnership. All but the last are Delaware limited partnerships, and the last is a Massachusetts limited partnership. For all, their principal place of business is Boston, Massachusetts.

15. David V. Harkins (“Harkins”) was a director of Refco. He is also Vice-Chairman of THL. He is a citizen of Massachusetts.

16. Scott L. Jaeckel (“Jaeckel”) was a director of Refco. He is also Managing Director of THL. He is a citizen of Massachusetts.

17. Thomas H. Lee (“Lee”) was a director of Refco. He is also Chairman of THL. He is a citizen of Minnesota.

18. Scott A. Schoen (“Schoen”) was a director of Refco. He is also Co-President of THL. He is a citizen of Massachusetts.

19. Leo R. Breitman (“Breitman”) was a director and audit committee member of Refco. He is a citizen of Florida.

20. Nathan Gantcher (“Gantcher”) was a director and audit committee member of Refco. He is a citizen of New York.

21. Ronald L. O’Kelley (“O’Kelley”) was a director and audit committee member of Refco. He is a citizen of Florida.

FACTUAL BACKGROUND

22. Beginning in 1998, several Refco customers—Southeast Asian currency trading clients—suffered massive trading losses in what became known as the “Asian Financial Crisis.” On December 8, 1997, when its government announced that it was closing nearly all of the country’s trading houses, Thailand’s currency value dropped 30%. Many trading houses who had been speculating on that currency became instantly insolvent. Capital flight out of Southeast Asia generally followed. The crisis quickly moved to Russia and commodity markets.

23. By year-end 1998, Refco’s customers owed Refco hundreds of millions of dollars, but could not pay. These amounts would have been and should have been written off as “bad” or uncollectible receivables. The resulting write-off would have and should have wiped out much of Refco’s profits and shareholders’ equity.

24. This would have precluded the plans Bennett and those in knowing participation with him had for capitalizing on Refco’s otherwise successful history. As discussed below, Bennett planned to extract monstrous sums of money for his benefit all premised on the apparent success of Refco.

25. To further these plans, Bennett and those in knowing participation with him “paid” the receivable while borrowing that money from Refco. What were truly losses (the “Losses”) became debt.

26. The entity Bennett used for this was Refco Holding. Refco Holding, however, was an insider, meaning the debt would have to be publicly disclosed as a related party transaction. This would have triggered greater scrutiny and defeated the purpose of concealing the Losses—investors are suspicious of insider transactions, which would have made Refco less attractive.

27. So, to further the deception, Bennett and those in knowing participation with him, before each reporting period, would borrow the money from Liberty Corner and repay Refco while Liberty Corner would borrow the money from Refco Capital, a Refco subsidiary. Liberty Corner would receive about 75 basis points on top of the interest it was charged by Refco Capital to incentivize it to participate, and, to guarantee it could not lose, Refco guaranteed the loan to Refco Holding.

28. After the reporting period closed, the parties would unwind the transaction, returning the Losses to related party debt. As the next reporting period approached, the parties would resurrect the transaction, transforming the Losses into third party debt.

29. As seen through this smoke and mirrors, Refco was a resounding success. For instance, as reported in millions:

	FY00	FY01	FY02	FY03	FY04	FY05	1Q06
Net Income	45	72	93	140	187	176	32
Equity	441	500	522	566	616	150	492
EBITDA ¹	92	140	179	211	258		

¹ Earnings Before Interest, Taxes, Depreciation, and Acceleration.

30. Based on this apparent success, Bennett and later THL received enormous sums. Refco began as Refco Group Ltd, LLC (“Refco Group”), which became the operating subsidiary of Refco. Bennett, through Refco Holding, owned all of it. From it, Bennett received about \$1,832,800,000 from 2003 through 2005. Netting out the \$433 million he advanced and then paid for the Losses (discussed below), he received a total of about \$1,399,800,000 from Refco Group. Because of the hidden Losses, these distributions seemed justified and made Refco attractive.

31. In August 2004, THL acquired about 57% of New Refco in a leveraged buyout in which Refco Group issued \$600 million in bonds and borrowed \$800 million from banks.

32. From New Refco, during 2004-2005, THL received about \$67.4 million, including \$30 million as a “fee.”

33. Refco’s apparent success justified the debt financing. For instance, the offering circular for the bond offering bragged that Refco’s EBITDA had increased at a compound annual growth rate of 29.4% since 2000, with the last twelve months EBITDA being \$269 million.

34. The anticipated IPO would, however, be the ultimate payoff. In August 2005, Refco’s IPO included selling shares held by Bennett and THL and a special dividend of \$82,203,000 to them. All told, Bennett netted about \$146.3 million, and THL netted about \$225.2 million.

35. From the IPO, Refco netted only about \$254.5 million, of which \$210 million was used to redeem debt.

36. Refco’s apparent success justified the IPO. For instance, the registration statement and prospectus bragged that Refco had (i) net income of \$173 million in the last fiscal year (ending February 2005) and generated another \$42.6 million in the next quarter (ending

May 2005), (ii) increased operating profit from \$61 million in 2000 to \$150.6 million in 2005, representing a nearly 20% compound annual growth rate, and had (iii) grown net revenues at a 23.6% compounded annual rate over the last 5 years.

37. In August 2005, in connection with the IPO, Refco hired a new controller, Peter James. Shortly before October 10, 2005, James discovered and reported the concealed Losses.

38. Events happened quickly after that. Bennett admitted the debt, which at that point totaled about \$433 million, and paid it. On October 10, 2005, Refco issued a press release stating what it knew.

39. Refco may not have been as successful as it appeared in its financial statements, but, most importantly, customers became anxious about the stability and integrity of Refco, and bolted.

40. Refco was forced to file for bankruptcy on October 17, 2005.

41. If the Losses had never been concealed, Refco would have survived.

42. Concealing the Losses, however, caused Refco's bankruptcy.

43. As of September 2005, Refco's equity market capitalization was about \$3.7 billion.

44. This value as of that date would have been undisturbed by the timely disclosure of the Losses because the Losses were predominantly, if not exclusively, incurred several years before the IPO. Refco's market value would not have been significantly affected adversely if its net income was reduced more than five years before the IPO—so long as the market had confidence in the financial statements and the management preparing them.

45. Concealing the Losses, however, cost Refco its business valued at about \$3.7 billion minus any remaining equity value.

46. Refco has been sued in several securities and other lawsuits arising out of the concealment of the Losses, further compounding Refco's losses.

47. Bennett, on the other hand, benefited—for a total of about \$1,546,100,000.

48. THL benefited too—for a total of about \$292.6 million.

49. Grant Thornton was hired as Refco's outside auditors and accountants in 2002 and remained so until Refco's bankruptcy.

50. Grant Thornton was paid about \$8.1 million in fees through February 2005 (the end of fiscal year 2005).

51. Grant Thornton gave unqualified audit reports for Refco.

52. Grant Thornton had a professional responsibility to Refco to identify and disclose the Losses and the transactions Bennett used to conceal them.

53. Had Grant Thornton properly planned and performed its audit responsibilities, which required professional skepticism, especially with regard to related-party transactions, and otherwise audited Refco in accordance with Generally Accepted Auditing Standards ("GAAS") and Generally Accepted Accounting Principles ("GAAP") Grant Thornton would have uncovered Bennett's concealment of the Losses and Refco could have avoided the loss of its business and bankruptcy.

54. All conditions precedent to the filing of this action have been discharged, performed, or otherwise waived.

COUNT I
BREACH OF FIDUCIARY DUTY

55. The Equity Committee repeats and realleges the allegations set forth in paragraphs 1 through 54 above as though set forth herein in their entirety.

56. Bennett, as a Refco officer and director, and Breitman, Gantcher, O’Kelley, Harkins, Jaeckel, Lee, and Schoen, as Refco directors, (collectively the “Directors”) owed Refco a fiduciary duty, which included the duties of care, loyalty, and good faith. The Directors breached this duty by concealing, participating in the concealment, or failing to uncover the concealment of the Losses. As a result of the concealment, Refco lost about \$3.7 billion minus any remaining equity value, Bennett benefited in the amount of about \$1,546,100,000, and THL benefited in the amount of about \$292.6 million.

57. Accordingly, Refco seeks \$3.7 billion minus any remaining equity value as its actual damages, \$1,546,100,000 from Bennett and \$292.6 million from THL under the principles of constructive trust or disgorgement, and forfeiture of all fees and payments the Directors received from Refco.

COUNT II
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

58. The Equity Committee repeats and realleges the allegations set forth in paragraphs 1 through 57 above as though set forth herein in their entirety.

59. The following knowingly induced the Directors’ breach of their fiduciary duty or participated in the breach: THL, Refco Holding, Grant Thornton, and Liberty Corner.

60. Accordingly, Refco seeks from them \$3.7 billion minus any remaining equity value as its actual damages and \$292.6 million from THL under the principles of constructive trust or disgorgement.

COUNT III
ACCOUNTANT MALPRACTICE (NEGLIGENCE)

61. The Equity Committee repeats and realleges the allegations set forth in paragraphs 1 through 60 above as though set forth herein in their entirety.

62. Grant Thornton owed a duty of care to Refco for the audits and related services Grant Thornton conducted on Refco's financial statements. These services were negligently or carelessly performed. They were not performed with the degree of skill and care commonly applied in the community by major accounting firms or the degree of skill and care that Grant Thornton held itself out as having. Grant Thornton's negligence proximately caused the damages Refco suffered as described above.

63. Accordingly, Refco seeks \$3.7 billion minus any remaining equity value as its actual damages.

COUNT IV
ACCOUNTANT MALPRACTICE (BREACH OF CONTRACT)

64. The Equity Committee repeats and realleges the allegations set forth in paragraphs 1 through 63 above as though set forth herein in their entirety.

65. Grant Thornton entered into engagement agreements with Refco to render professional services on behalf of Refco. Grant Thornton breached those agreements, directly causing Refco's damages as described above.

66. Accordingly, Refco seeks \$3.7 billion minus any remaining equity value as its actual damages.

COUNT V
FRAUD

67. The Equity Committee repeats and realleges the allegations set forth in paragraphs 1 through 66 above as though set forth herein in their entirety.

68. The Directors had a duty to disclose material facts, and, in the face of that duty, deliberately remained silent. Further, the Director's deceptive conduct is equivalent to a false statement of fact. Either way, the Directors made representations to Refco that were material

and false. When made, the Directors knew the representations were false and made them with the intention that Refco act on them. Refco relied to its detriment on the representations.

69. As a result of the fraud, Refco seeks \$3.7 billion minus any remaining equity value as its direct damages or as representing the difference between the value Refco had as represented and the value it had as received.

COUNT VI
EQUITABLE SUBORDINATION OF
THE EQUITY INTERESTS OF BENNETT AND THL

70. The Equity Committee repeats and realleges the allegations set forth in paragraphs 1 through 69 above as though set forth herein in their entirety.

71. The actions of Bennett and THL complained of herein constituted inequitable misconduct that harmed non-affiliated Equity Security Holders and/or unfairly benefited Bennett and THL. The criminally fraudulent scheme perpetuated by Bennett caused billions of dollars of loss to Equity Security Holders. THL participated or had reason to know of the fraudulent scheme. Both Bennett and THL both profited substantially from the fraudulent scheme. To avoid unfairness, Bennett and THL should not be allowed to receive distribution from Refco on account of their equity interests and thus their interests, whether held directly or through affiliates, should be subordinated to those of the other Equity Security Holders

DISCOVERY RULE

72. Refco invokes the discovery rule. Refco did not discover the concealment until shortly before October 10, 2005.

PUNITIVE DAMAGES

73. Defendants have engaged in outrageous conduct and acted with willfulness, wantonness, or reckless indifference to the rights of others. They should be punished, and others similarly situated should be deterred.

74. Refco, therefore, seeks an award of punitive damages.

WHEREFORE, the Equity Committee requests that the Court enter Judgment in favor of Refco as follows:

- (a) an award of \$3.7 billion minus any remaining equity value as Refco's actual damages;
- (b) an award of \$1,546,100,000 as the amount Bennett benefitted from his breach of fiduciary duty;
- (c) an award of \$292.6 million as the amount THL benefitted from its breach of fiduciary duty;
- (d) an award of punitive damages;
- (e) the costs incurred by Refco in defending or representing itself in cases arising out of the misconduct alleged herein;
- (f) awarding to the Equity Committee its attorneys' fees in this proceeding;
- (g) the equitable subordination of the equity interests held by Bennett and THL or their respective affiliates; and
- (h) granting such other relief as this Court deems appropriate.

Dated: New York, New York
_____, 2006

ANDREWS KURTH LLP

By: /s/_____.
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 850-2800
600 Travis, Ste. 4200
Houston, TX 77002
Telephone: (713) 220-4200

**ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF EQUITY SECURITY
HOLDERS**