

OCT 09 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: SYNCOR INTERNATIONAL
CORP. SECURITIES LITIGATION,

MILTON ARBITRAGE PARTNERS,
LLC; RICHARD BOWE; ALAN
KAPLAN; FRANKLIN C. EMBON, JR.;
JONATHAN ALK; JOYCE OLDHAM;
WEST VIRGINIA LABORERS
PENSION TRUST FUND; BRAD
LOOKINGBILL; THEM LUU; DAVID
HALL; PHYLLIS WALTZER; LARRY
HAHN, on behalf of themselves and all
others similarly situated,

Plaintiffs - Appellants,

v.

SYNCOR INTERNATIONAL CORP.;
WILLIAM P. FORSTER; HAIG S.
BAGERDJIAN; ROBERT G. FUNARI;
DAVID WARD; JACK L. COFFEY;
SHEILA H. COOP; JOHN S. BAUMAN;
MICHAEL E. MIKITY; MONTY FU;
GEORGE S. OKI; HENRY M. WAGNER,
JR., M.D.; GAIL R. WILENSKY, Dr.;
MICHAEL LACH,

Defendants - Appellees.

No. 05-55748

D.C. Nos. CV-02-08560-LGB

CV-02-08575-LGB

CV-02-08687-LGB

CV-02-08841-LGB

CV-02-08972-LGB

CV-02-09076-LGB

CV-02-09248-LGB

CV-02-09583-LGB

CV-02-09621-LGB

CV-02-09640-LGB

CV-03-00052-LGB

Central District of California,
Los Angeles

ORDER

Before: FARRIS and GOULD, Circuit Judges, and DUFFY,* Senior Judge.

The Memorandum disposition filed on June 12, 2007, is amended as follows:

At page 3, paragraph 2, line 5, the following footnote is inserted (following the sentence ending “. . . illegal payments were driving overseas growth.”):

² We note that the Supreme Court has recently clarified what it means for an inference to be “strong” in this context. *See Tellabs Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499 (2007). Our conclusion that the inference of scienter is strong is a result of our consideration of the “plausible nonculpable explanations for the defendant[s]’ conduct” forcefully advocated by the defendants in addition to inferences favoring the plaintiffs. *Id.* at 2510. Upon such review, the requisite inference “need not be irrefutable . . . or even the most plausible of competing inferences.” *Id.* (internal quotation marks and citation omitted). Rather, it need merely be, as we conclude it is here, “at least as compelling as any opposing inference one could draw from the facts alleged.” *Id.*

With this amendment to the Memorandum disposition, Appellee’s Petition for Panel Rehearing is hereby DENIED. Future Petitions for Panel Rehearing will not be entertained.

* The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation.

