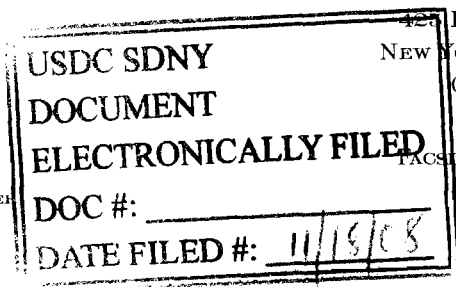


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BY HAND

November 13, 2008

Re: *Operative Plasterers and Cement Masons Int'l Assoc.
Local 262 Annuity Fund v. Fuld, et al.*, No. 08 Civ. 5523
(LAK)

Hon. Lewis A. Kaplan
United States District Judge
United States District Court,
Southern District of New York
500 Pearl Street, Room 1310
New York, NY 10007

NOV 14 2008

Dear Judge Kaplan:

We represent individual defendants Christopher M. O'Meara, Ian Lowitt, Michael L. Ainslie, John F. Akers, Roger S. Berlind, Thomas H. Cruikshank, Marsha Johnson Evans, Sir Christopher Gent, Joseph M. Gregory, Roland A. Hernandez, Henry Kaufman and John D. Macomber in this action. On October 27, 2008, Lead Plaintiffs filed a 196-page amended complaint that, among other things, added new claims under the Securities Act of 1933 (the original complaint only pleaded claims under the Securities Exchange Act of 1934) and added 10 individual defendants and 36 underwriter defendants (the original complaint named four individual defendants and no underwriter defendants). Under the current scheduling order, motions to dismiss or other responses to the amended complaint are due to be filed by December 10, 2008. For the reasons discussed below, we respectfully request, with the consent of lead Plaintiffs' counsel, that Your Honor extend the December 10 deadline for 45 days.

Consolidation Issues

As Your Honor is aware, on September 24, 2008 a separate purported federal securities class action was filed in this District, *Fogel Capital Management, Inc v. Fuld, et al.*, No. 08 Civ. 8225, which arises out of the same facts and circumstances as *Operative Plasterers* relating to disclosures and other public statements concerning the financial health of Lehman Brothers Holdings Inc. ("Lehman") leading up to its bankruptcy and the value of certain Lehman-issued securities. Following a request by lead counsel for the *Operative Plasterers* plaintiffs, the *Fogel Capital* case was reassigned from Hon. Sidney H. Stein to Your Honor.

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On October 13, 2008, Fogel Capital Management Inc. ("Fogel") filed a motion to be appointed lead counsel in the *Fogel Capital* action. Fogel has now withdrawn its lead plaintiff motion, consented to the *Operative Plasterers* plaintiffs' appointment as lead plaintiffs and consented to those plaintiffs' motion to consolidate *Fogel Capital* with *Operative Plasterers*. But by letter dated November 5, 2008, Grant & Eisenhofer, counsel for another unidentified institutional investor, informed the Court that it intended to file its own lead plaintiff motion in *Fogel Capital* by November 24, 2008. In addition, by letter dated November 12, 2008, Grant & Eisenhofer reiterated its intention to file its own lead plaintiff motion despite Fogel's withdrawal of its lead plaintiff motion and consent to consolidation with *Operative Plasterers*. Other lead plaintiff motions may be filed in *Fogel Capital* as well. Defendants take no position on the lead counsel issue, but strongly believe that these related federal securities actions should be consolidated into a master action in which a single consolidated amended complaint is filed.

Addition of Numerous Underwriter Defendants

The *Operative Plasterers* amended complaint named as defendants 36 underwriters that allegedly were involved in one or more Lehman securities offering. *Fogel Capital* and the other recently-filed actions also name numerous underwriters as defendants, including some who are also named in *Operative Plasterers*. It is our understanding that certain of these entities are headquartered outside the United States and have not yet retained counsel in these actions.

Other Lehman-Related Securities Actions Filed in the Southern District of New York

Recently, two additional purported class actions have been filed in the United States District Court for the Southern District of New York against most of the same individual defendants named in *Operative Plasterers* and *Fogel Capital*, as well as a single underwriter defendant. The first case, *Peyser v. Fuld, et al.*, No. 08 Civ. 9404, was filed on October 31, 2008 and assigned to Hon. Richard M. Berman. The second case, *Gott v. UBS Financial Services Inc., et al.*, No. 08 Civ. 9578, was filed on November 6, 2008 and assigned to Hon. Victor Marrero. These actions assert '33 Act claims relating to the circumstances surrounding Lehman's bankruptcy and the value of and disclosures with respect to certain Lehman-issued securities. By letters dated November 12, 2008, we requested a transfer of these actions from Judges Berman and Marrero to Your Honor as related to *Operative Plasterers* and *Fogel Capital*, pursuant to Rule 15 of the Southern District's Rules for the Division of Business Among District Judges. To the extent these actions are transferred to Your Honor, motions may be made to have them consolidated with *Operative Plasterers* and *Fogel Capital*.

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Recently Removed State Court Actions

In addition, we are aware of eight separate actions that were recently filed in state courts (six in Arkansas and two in New York), which were removed to four different federal courts yesterday or earlier today. Each of these cases brings '33 Act claims relating to circumstances surrounding Lehman's bankruptcy and the value of and disclosures with respect to certain Lehman-issued securities against overlapping sets of individual and underwriter defendants, who are named as defendants in *Operative Plasterers* and/or *Fogel Capital*. These actions are:

- *Swiskay v. Citigroup Global Markets Inc.* (originally filed in Supreme Court of New York, Nassau County and removed to the United States District Court for the Eastern District of New York under Index No. 08 Civ. 4600).
- *Stark v. Callan, et al.* (originally filed in Supreme Court of New York, New York County and removed to the United States District Court for the Southern District of New York under Index No. 08 Civ. 9793). As part of the removal to the Southern District, the *Stark* action was referred to Your Honor as related to *Operative Plasterers* and *Fogel Capital*.
- *Deathrow v. Fuld, et al.* (originally filed in the Circuit Court of Saline County, State of Arkansas and removed to the United States District Court for the Eastern District of Arkansas, Little Rock Division under Index No. 08 Civ. 4149).
- *Mease and Caldwell v. Fuld, et al.* (originally filed in the Circuit Court of Washington County, State of Arkansas and removed to the United States District Court for the Western District of Arkansas, Fort Smith Division under Index No. 08 Civ. 2123).
- *Mease v. Fuld, et al.* (originally filed in the Circuit Court of Garland County, State of Arkansas and removed to the United States District Court for the Western District of Arkansas, Fort Smith Division under Index No. 08 Civ. 2124).
- *Warden v. Fuld, et al.* (originally filed in the Circuit Court of Benton County, State of Arkansas and removed to the United States District Court for the Western District of Arkansas, Fort Smith Division under Index No. 08 Civ. 2126).
- *Napierala v. Fuld, et al.* (originally filed in the Circuit Court of Benton County, State of Arkansas and removed to the United States District Court for the Western District of Arkansas, Fort Smith Division under Index No. 08 Civ. 2127).

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- *Shiple v. Fuld, et al.* (originally filed in the Circuit Court of Benton County, State of Arkansas and removed to the United States District Court for the Western District of Arkansas, Fort Smith Division under Index No. 08 Civ. 2125).

Tomorrow, Defendants will file with the Judicial Panel on Multidistrict Litigation a motion to transfer seven of these removed actions (all except *Stark*, which was removed directly to this Court) to this District and to assign the actions to Your Honor for coordination, and possibly consolidation, with *Operative Plasterers* and *Fogel Capital*.

Thus, to the extent the motion is granted by the MDL Panel, Judges Berman and Marrero transfer the *Peyser* and *Gott* actions, and Your Honor accepts the referral of the recently removed *Stark* action and the *Peyser* and *Gott* actions, there will be 12 related securities actions, and one ERISA action, all arising out the same set of operative facts, circumstances and disclosures, pending before Your Honor.¹

* * *

In sum, given the numerous procedural issues currently facing plaintiffs, defendants and the Court, we respectfully request that Your Honor extend for 45 days the upcoming December 10 deadline for filing motions to dismiss or otherwise responding to the *Operative Plasterers* amended complaint.

In addition, to maintain coordination of the schedules of the related securities and ERISA cases, we respectfully request the same 45-day extension in *In re Lehman Brothers ERISA Litigation*. Lead counsel in both cases have consented to this request.

The proposed revised schedule in both *Operative Plasterers* and *In re Lehman Brothers ERISA Litigation* is as follows:

¹ To the extent the MDL Panel grants Defendants' motion to transfer, and thereafter additional related actions are filed in, or removed to, federal courts other than the Southern District of New York, Defendants intend to include them as "tag-along" cases in the MDL proceeding.

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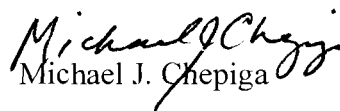
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- Defendants shall file and serve responsive pleading(s) or motion(s) no later than January 23, 2009.
- If any Defendant moves to dismiss the amended complaint, Lead Plaintiffs shall file and serve opposition brief(s) no later than February 23, 2009.
- Defendants shall file and serve reply brief(s) no later than March 9, 2009.

Respectfully submitted,


Michael J. Chepiga

cc: John P. Coffey, Esq. (By Facsimile)
Co-Lead Plaintiffs' Counsel in Operative Plasterers

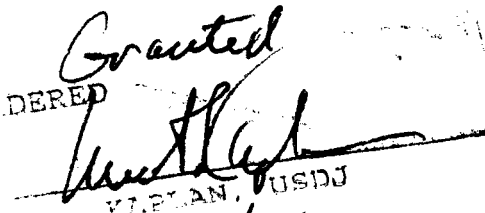
Mark C. Rifkin, Esq. (By Facsimile)
Co-Lead Plaintiffs' Counsel in In re Lehman Brothers ERISA Litigation

Patricia M. Hynes, Esq. (By Facsimile)
Counsel for Defendant Richard S. Fuld, Jr.

Dietrich L. Snell, Esq. (By Facsimile)
Counsel for Defendant Erin Callan in Operative Plasterers

Mitchell A. Lowenthal, Esq. (By Facsimile)
Counsel for Certain Underwriter Defendants in Operative Plasterers

Audrey Strauss, Esq. (By Facsimile)
Co-counsel for Joseph M. Gregory


SC ORDERED
KAPLAN, USDJ
11/18/08