



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS SECURITIES AND ERISA  
LITIGATION

09 MD 2017 (LAK)

This document applies to:

*In re Lehman Brothers ERISA Litig.* No. 08 Civ. 5598 (LAK)  
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**PRETRIAL ORDER NO. 15**

LEWIS A. KAPLAN, *District Judge.*

On February 2, 2010, the Court granted defendants' motion to dismiss the consolidated amended complaint ("CAC") on the grounds that (a) the Director Defendants were not plan fiduciaries, and (b) the CAC failed to allege any breach of duty by the one other defendant, Ms. Uvino. Familiarity with that decision is assumed.

On March 3, 2010, more than a month later, plaintiffs moved to alter or amend the judgment and for leave to amend the CAC. The proposed second consolidated amended complaint (the "SCAC") is 140 pages long and contains 449 numbered paragraphs.

The Court now is in receipt of a letter from plaintiffs' counsel asking permission to amend the SCAC (leave to file which has not been granted) to reflect new information supposedly reflected in the 2,200 page, recently released report of the examiner appointed in the Lehman Brothers bankruptcy. The letter, which in welcome contrast to the unnecessarily lengthy SCAC and no doubt the doubtless still unwritten third consolidated amended complaint that is a twinkling in counsel's eye, is little more than a page long. It contains no hint as to what if anything in the Examiner's report might have any conceivable bearing on the question whether the Court ought to grant relief under Rule 59 and allow another amended pleading, let alone any indication of what yet another amendment might add to the proposed SCAC.

Accordingly, the letter application is denied. If the Court denies leave to file the SCAC on the ground of futility of amendment or dismisses it too for sufficiency, there will be time enough for plaintiffs to seek leave to amend yet again.

SO ORDERED.

Dated: March 22, 2010

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Lewis A. Kaplan  
United States District Judge