UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOGEL CAPITAL MANAGEMENT, INC., And On Behalf Of All Others Similarly Situated, Plaintiff, vs. RICHARD S. FULD, JR., MICHAEL L. AINSLIE, JOHN F. AKERS, ROGER S. BERLIND, THOMAS H. CRUIKSHANK, MARSHA JOHNSON EVANS, SIR CHRISTOPHER GENT, ROLAND A. HERNANDEZ, HENRY KAUFMAN, JOHN D. MACOMBER, BANC OF AMERICA SECURITIES LLC, CITIGROUP GLOBAL MARKETS INC., MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, MORGAN STANLEY & CO. INCORPORATED, UBS SECURITIES LLC., and WACHOVIA CAPITAL MARKETS, LLC., Defendants.	NO. 08-CV-8225 (LAK) ECF Case JURY TRIAL DEMANDED

DECLARATION OF DAVID R. STICKNEY IN SUPPORT OF THE PENSION FUND GROUP'S MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION TO FOGEL CAPITAL MANAGEMENT'S MOTION FOR APPOINTMENT OF SEPARATE LEAD PLAINTIFF AND LEAD COUNSEL

I, David R. Stickney, declare as follows:

1. I am a member in good standing of the bar of the State of California and have been admitted *pro hac vice* before this Court. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP. I submit this declaration in support of the Pension Fund Group's Memorandum of Law in Support of Opposition to Fogel Capital Management's Motion for Appointment of Separate Lead Plaintiff and Lead Counsel.

2. Attached as Exhibits A-F are true and correct copies of the following documents:

Exhibit A: First issued notice of the Lehman Brothers Holdings, Inc. Securities Class Action filed in the Northern District of Illinois, dated April 30, 2008

Exhibit B: First issued notice of the Lehman Brothers Holdings Inc. Securities Class Action filed in this district, dated June 18, 2008

Exhibit C: Letter from Counsel for the Pension Fund Group to the Honorable Sidney H. Stein, dated September 26, 2008

Exhibit D: Letter from Fogel's Counsel to the Honorable Sidney H. Stein, dated October 1, 2008

Exhibit E: October 7, 2008 Notice of Reassignment

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed in San Diego, California on this 29th day of October 2008.

/s/ David R. Stickney
David R. Stickney

EXHIBIT A

FOR IMMEDIATE RELEASE: April 30, 2008

Schiffrin Barroway Topaz & Kessler, LLP and Labaton Sucharow LLP Filed a Class Action Lawsuit Against Lehman Brothers Holdings Inc. -- LEH

NEW YORK, April 30, 2008 (PRIME NEWSWIRE) – Schiffrin Barroway Topaz & Kessler, LLP and Labaton Sucharow LLP filed a class action lawsuit on April 29, 2008 in the United States District Court for the Northern District of Illinois, on behalf of purchasers of the securities of Lehman Brothers Holdings Inc. ("Lehman Brothers" or the "Company") between September 13, 2006 and July 30, 2007, inclusive (the "Class Period"). The complaint names Lehman Brothers, Richard S. Fuld, Christopher M. O'Meara, and Joseph M. Gregory as defendants (collectively, "Defendants"). The complaint alleges that during the Class Period, Defendants violated the Securities Exchange Act of 1934 by issuing various materially false and misleading statements about Lehman Brothers' financial well-being, business operations and prospects, which had the effect of artificially inflating the market price of the Company's securities.

Notice is hereby given that in light of the voluntary dismissal and termination of Reese v. O'Meara, No. 1:08-cv-01119 (N.D. Ill. filed Feb. 22, 2008), the action filed yesterday is now the first-filed action against defendants. Accordingly, Lead Plaintiff papers must be filed with the court no later than 60 days from this notice, or June 30, 2008.

If you are a member of this class you can view a copy of the complaint and join this class action online at http://www.labaton.com/en/cases/Newly-Filed-Cases.cfm.

The complaint alleges, *inter alia*, that Defendants failed to fully disclose the nature and extent of the Company's exposure to losses incurred from trading in subprime mortgage-backed derivatives and that the Company failed to timely writedown its positions in these securities. On July 10, 2007, Lehman Brothers announced that it had "unrealized" losses of $459 million in the quarter ended May 31, 2007 from mortgages and mortgage-backed assets in its inventory. On the same day, it was reported that Standard & Poor's indicated that it may cut ratings on $12 billion of bonds backed by subprime mortgages, a move that would significantly cut into the Company's trading profits, since it is Wall Street's largest underwriter of mortgage bonds. As a result of the news, Lehman Brothers' stock fell $3.76 per share on July 10, 2007 on unusually high trading volume. Throughout the remainder of the Class Period, Lehman Brothers continued to downplay the risks associated with owning these mortgage-backed securities, and the nature and true extent of the Company's exposure to subprime-related assets and financial positions. On July 26, 2007, it was reported by Bloomberg that the risk of owning Lehman Brothers' bonds "soared" and its share price plunged "as concerns escalated that investment banks will be hurt by losses from subprime mortgages and corporate debt." The report detailed the soaring cost of credit-default swaps used to bet on Lehman Brothers' creditworthiness, signaling a significant deterioration in investor confidence. On this news, Lehman Brothers' shares fell an additional $3.16 per share on July 26, 2007, again on unusually heavy trading volume. Finally, on July 31, 2007, Bloomberg reported that "... Lehman Brothers [is] as good as junk" because the prices of credit-default swaps for the Company equated to a Ba1 rating, implying that the Company's credit ratings were below investment grade. On this news, the Company's shares fell an additional $2.80 on heavy trading volume.

Plaintiff is represented by the law firms Schiffrin Barroway Topaz & Kessler, LLP and Labaton Sucharow LLP. Schiffrin Barroway and Labaton Sucharow are two of the country's premier national law firms that represent individual and institutional investors in class action, complex securities and corporate governance litigation.

If you bought Lehman Brothers securities between September 13, 2006 and July 30, 2007, inclusive, you may qualify to serve as Lead Plaintiff. Lead Plaintiff papers must be filed with the court no later than June 30, 2008. If you would like to consider serving as lead plaintiff or have any questions about the lawsuit, please contact one of our representatives or Andrei Rado, Esq. of Labaton Sucharow, at 800-321-0476, or Darren J. Check, Esq. of Schiffrin Barroway at 888-299-7706.

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CONTACTS:
Andrei V. Rado
Attorney
Labaton Sucharow LLP
140 Broadway, New York, NY 10005
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212 883 7521

EXHIBIT B

SOURCE: Saxena White P.A.

Saxena White

Jun 18, 2008 17:14 ET

Saxena White P.A. Files a Shareholder Suit Against Lehman Brothers Holdings Inc.

Highlighted Links

http://www.saxenawhite.com

BOCA RATON, FL--(Marketwire - June 18, 2008) - Notice is hereby given that Saxena White P.A. has filed suit on behalf of shareholders of Lehman Brothers Holdings, Inc. ("Lehman Brothers" or the "Company") (NYSE: LEH) in the United States District Court for the Southern District of New York.

The complaint seeks damages for violations of federal securities laws on behalf of all investors who purchased Lehman common stock between September 13, 2006 through June 6, 2008, inclusive (the "Class Period"). Lehman Brothers is an international investment banking firm. Throughout the Class Period, Defendants touted the Company's strong liquidity position, superior risk management policies and stable overall financial prospects despite a difficult environment in the financial services industry. As a result of Defendants' statements, the stock traded as high as $86.18 per share during the Class Period.

The complaint extends a prior Class Period to include the Company's most recent earnings disclosure of June 9, 2008. On this date, prior to the opening of trading on the New York Stock Exchange, the Company stunned the market by reporting a $2.8 billion second quarter loss -- nearly ten times the loss analysts had anticipated and the Company's first reported loss since going public in 1994. Lehman Brothers also announced plans to raise $6 billion in additional capital to help it survive its financial crisis. This news shocked investors as management had issued repeated assurances that the Company was financially strong and its liquidity position solid, even going so far as denying speculation that Lehman Brothers would suffer losses such as this. The stock closed at $29.48 that day, a decline of $2.81, on heavy volume of close to 170 million shares.

You may obtain a copy of the complaint from the Court, by contacting Saxena White P.A. through its website www.saxenawhite.com, by emailing jwhite@saxenawhite.com or gstone@saxenawhite.com, or by calling (561) 394-3399.

If you acquired the common stock of Lehman Brothers Holdings Inc. between September 13, 2006 and June 6, 2008, inclusive, you may wish to contact Joe White or Greg Stone at Saxena White P.A. to discuss your rights and interests.

If you wish to apply to be the lead plaintiff in this action, a motion on your behalf must be filed with the court no later than June 30, 2008. You may contact Saxena White P.A. to discuss your rights regarding the appointment of lead plaintiff and your interest in the class action. Please note that you may also retain counsel of your choice and need not take any action at this time to be a class member.

Saxena White P.A. has offices in Boca Raton, San Francisco, and Boston, and specializes in prosecuting securities fraud and complex class actions on behalf of institutions and individuals. Currently serving as lead counsel in numerous securities fraud class actions nationwide, the firm has recovered millions of dollars on behalf of injured investors and is active in major litigation pending in federal and state courts throughout the United States.

Back

Contact:

Joseph E. White, III
Email Contact

Greg Stone
Email Contact

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EXHIBIT C

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

ATTORNEYS AT LAW

NEW YORK • CALIFORNIA • NEW JERSEY • LOUISIANA

John P. Coffey
Sean@blbglaw.com
212-554-1409

September 26, 2008

VIA HAND DELIVERY

Honorable Sidney H. Stein
United States District Court Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1010
New York, NY 10007

Re: *Fogel Cap. Management, Inc. v. Fuld, et al.*, No. 08-Civ-8225.

Dear Judge Stein:

Together with Schiffrin Barroway Topaz & Kessler, LLP, we represent the five institutional investors that Judge Kaplan appointed as Lead Plaintiffs in an earlier-filed securities class action pending in this Court, *Operative Plasterers and Cement Masons Int'l Assoc. Local 262 Annuity Fund, et al. v. Lehman Brothers Holdings, Inc., et al.*, No. 08-Civ-5523 (LAK) ("the *Pending Lehman Securities Class Action*").[1] As explained below, the *Pending Lehman Securities Class Action* and *Fogel* have overlapping claims and defendants and focus on the same subject matter. Accordingly, we write on behalf of the Lead Plaintiffs to request that Your Honor transfer this later-filed case to Judge Kaplan pursuant to Local Rules 15(a) and (c) of the Rules for Division of Business Among District Judges.

The *Pending Lehman Securities Class Action*, filed in this District over three months ago, asserts claims on behalf of purchasers of Lehman Brothers Holdings, Inc. ("Lehman") common stock against Lehman and certain of its officers and directors for violations of the federal securities laws.[2] The complaint alleges that, during the period from September 13, 2006 through June 6, 2008, the defendants disseminated materially false and misleading information

[1] The Lead Plaintiffs are Alameda County Employees' Retirement Association, the Government of Guam Retirement Fund, the Northern Ireland Local Governmental Officers Superannuation Committee, The City of Edinburgh Council as Administering Authority of the Lothian Pension Fund and the Operating Engineers Local 3 Trust Fund (collectively, the "Pension Fund Group").

[2] Lehman filed a voluntary petition for bankruptcy on September 15, 2008.

concerning Lehman's operations and financial condition while suppressing or recklessly ignoring information known to them about the Company's business and finances, including the Company's massive exposure to losses related to its investments backed by residential and commercial mortgages and real estate.

On April 30, 2008, pursuant to the Private Securities Litigation Reform Act, a notice was issued advising investors of the opportunity to seek appointment as lead plaintiff by June 30, 2008.[3] Several investors so moved and, by Order of July 31, 2008, Judge Kaplan appointed the Pension Fund Group as the Lead Plaintiffs pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act, 15 U.S.C. §78u-4(a)(3)(B). Judge Kaplan also established a schedule for Lead Plaintiffs to file an Amended Complaint and for defendants to respond to that complaint. Judge Kaplan has since entered orders approving stipulated revisions to the schedule based on recently unfolding events. In accordance with that schedule, Lead Plaintiffs will file their Amended Complaint on October 27, 2008.

Based on Lead Counsel's investigation to date, the Amended Complaint will assert claims for violations of the Securities Act and the Securities Exchange Act on behalf of purchasers of publicly-traded Lehman securities (including stock, preferred shares and/or options) between June 12, 2007 and September 15, 2008. Among the claims that will be asserted are those for strict liability based on violations of Section 11, 12 and 15 of the Securities Act on behalf of those who purchased or acquired shares in the February 5, 2008 offering of Lehman Preferred Series "J" stock (the "Preferred J Shares") – the same offering singled out in *Fogel*. The Amended Complaint will allege that the offering documents were materially false and misleading because at the time of the offering Lehman's financial reports lacked transparency; Lehman failed to disclose its exposure to losses from its mortgage-related assets.

Fogel arises out of the same operative facts as the *Pending Lehman Securities Class Action* with respect to the Preferred J Shares. In *Fogel*, the plaintiff also asserts violations of Sections 11 and 15 of the Securities Act on behalf of itself and purchasers of Preferred J Shares. The plaintiff asserts claims against the same defendants either already named in the complaint pending before Judge Kaplan or to be named in the Amended Complaint, including certain officers and directors of Lehman and certain underwriters. *Fogel* also alleges that the offering documents were materially false and misleading "because at the time of the Offering Lehman was already suffering from adverse factors were not revealed and/or adequately addressed in the [Company's Prospectus]."

In light of the foregoing, both the *Pending Lehman Securities Class Action* before Judge Kaplan and this action share common claims, parties and witnesses. Consequently, "a

[3] The notice was issued by counsel for plaintiffs in the first securities class action against Lehman, which was filed in the Northern District of Illinois on April 29, 2008. Those Plaintiffs later voluntarily dismissed their case.

substantial saving of judicial resources would result," and "the just efficient and economical conduct of the litigations would be advanced," and "the convenience of the parties and witnesses would be served" if both cases are before the same judge. Because the *Pending Lehman Securities Class Action* is the first-filed action, has been overseen by Judge Kaplan for several months, and involves additional claims and parties, we respectfully request that *Fogel* be transferred to Judge Kaplan.

Moreover, apart from the *Pending Lehman Securities Class Action* and the case pending before Your Honor, other cases commenced in this Court have been deemed related to the *Pending Lehman Securities Class Action* and assigned to Judge Kaplan, including a consolidated ERISA class action, *In re Lehman Brothers ERISA Litigation*, 08 CIV 5598 (LAK), and a putative class action on behalf of purchasers of certain Mortgage Pass-Through Certificates alleging violations of Sections 11 and 15 of the Securities Act, *New Jersey Carpenters Health v. Lehman XS Trust Series 2005-5n*, 08-Civ-6762 (LAK) (removed from New York Supreme Court; motion for remand pending).[4]

To the extent that Your Honor has any questions or concerns regarding this request, we stand ready to address them. Thank you for your consideration of this matter.

Respectfully submitted,

John P. Coffey

cc: The Honorable Lewis A. Kaplan
Gregory M. Nespole, Esq.
Thomas J. McKenna, Esq.
David Stickney, Esq.
John A. Kehoe, Esq.
Michael J. Chepiga, Esq.
Paul Curnin, Esq.

[4] The same law firms representing the plaintiff in the ERISA class action also represent the plaintiff in *Fogel*.

EXHIBIT D

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WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC
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October 1, 2008

Honorable Sidney H. Stein
United States District Court Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1010
New York, NY 1007

Re: *Fogel Capital Management, Inc. v. Fuld, et al., 08-Civ-8225 (SHS).*

My firm and Gainey & McKenna are counsel to Fogel Capital Management ("FCM"), plaintiff in the above-referenced action (the "*FCM Action*"). We respectfully submit this letter in response to, and to clarify, the September 26, 2008 letter of John P. Coffey, Esq., counsel to plaintiffs in the action pending before the Honorable Lewis A. Kaplan styled *Operative Plasterers and Cement Masons Int'l Assoc. Local 262 Annuity Fund, et al. v. Lehman Brothers Holdings, Inc.*, et al., No. 08-Civ-5523 (the "*Operative Plasterers Action*").

Mr. Coffey's letter's ostensible purpose was to bring to the Court's attention the pendency of the *Operative Plasterers Action* and suggest that the *FCM Action*, before your Honor, and that Action be situated before the same Judge. FCM takes no position concerning whether the *FCM Action* should be transferred from Your Honor's docket to Judge Kaplan in order to promote judicial economy.

FCM does ask the Court, however, in considering that issue to note that while the Actions do have a common corporate issuer, the cases relate to different securities, disclosure regulations, and documents. For these reasons, and while we cannot predict the allegations of the forthcoming amended complaint in the *Operative Plasterers Action*, we would take exception to an effort to expand the *Operative Plasterers Action* beyond its claims in order to incorporate those claims asserted in FCM or to consolidate the two Actions. To do so, we submit, would be contrary to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for the following reasons.

First, the *FCM Action* asserts claims on behalf of purchasers of Lehman Preferred Series "J" ("Lehman Preferred J") commencing with the date of the Company's public offering on February 5, 2008 (the "Offering"). The claims arise under sections 11 and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l and 77o, which imposes strict liability on directors, officers, and underwriters for failures of required disclosure in a registration statement and prospectus as required by SEC regulations.

On the other hand, the *Operative Plasterers Action* exclusively asserts claims on behalf of persons or entities who bought Lehman common stock between September 13, 2006 and June 6, 2008. The *Operative Plasterers Action's* June 30, 2008 motion requesting appointment of lead plaintiff and lead counsel was only on behalf of Lehman common stockholders. In the motion, there was no mention whatsoever that counsel in the *Operative Plasterers Action* sought to represent the interests of investors who purchased Lehman Preferred J on the Offering. Nor is there any evidence in the record that any *Operative Plasterers* plaintiff brought such a claim, owns any of the preferred stock, or provided 60-days notice of commencement of an action to investors in the Preferred stock, as required by the PSLRA.

Second, consistent with the *Operative Plasterers'* application and prior history of that case, Judge Kaplan's order in the *Operative Plasterers Action* appointing lead plaintiff and lead counsel explicitly provides that the lead plaintiffs are "APPOINTED to serve . . . pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B) as amended by the [PSLRA] . . ."

Third, in the motion to be appointed lead plaintiff (and lead counsel), the lead plaintiff in the *Operative Plasterers Action* submitted a declaration that attached two PSLRA notices of pendency. The first notice, the only one required under the PSLRA, was dated April 30, 2008, and referenced a class period of September 13, 2006 through July 30, 2007. The notice explicitly states that it relates to claims brought only under the Exchange Act. Moreover, the published class period in that notice ends on July 30, 2007 - *nearly six months prior to the Preferred J Offering*.[1]

Fourth, the second publication attached to the motion is dated June 18, 2008, 12 days prior to the June 30, 2008 expiration date of the 60-day period required by the PSLRA. This notice stated the class period referenced in the earlier notice is sought to be expanded to terminate on June 6, 2008. It states that the action concerns stockholders who purchased common stock. It makes no reference to the Preferred J shares, the Offering, or claims under the Securities Act. Accordingly, investors like FCM, who possessed claims under the Securities Act arising out of the Offering of Preferred J shares, were not included in the *Operative Plasterers Action*, any prior proceedings before the Court, or notified of any PSLRA rights in connection with that Action.[2]

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[1] This notice was published by the firm of Schiffrin Barroway Topaz & Kessler, LLP, along with another firm. The Schiffrin firm was eventually appointed co-lead counsel with Mr. Coffey's firm on behalf of the common stock purchasers in the *Operative Plasterers Action*.

[2] This notice was filed by the firm of Saxena White P.A. That firm apparently supported the appointment of Mr. Coffey's firm and the Schiffrin firm when they moved for appointment as lead counsel in *Operative Plasterers Action* as they appear as "Addition Plaintiff's Counsel" on that motion.

Finally, it appears that lead plaintiffs (common stock purchases in *Operative Plasterers Action*) in their forthcoming amended complaint now intend to include FCM's claims. Absent from their statement, however, is any indication that the lead plaintiffs in *Operative Plasterers Action* purchased Lehman Preferred J on the Offering or even have standing to bring the claims.

In conclusion, while FCM would be pleased to litigate its claims before Your Honor or any jurist in the district of New York, it submits that the actions may be sufficiently different as not to require the delay and complexity that will ensue should a single judge take both actions. At most, the two actions should be coordinated after separate lead counsel and lead plaintiffs are appointed in the *FCM Action*.[3]

Thank you for your attention to this matter.

Respectfully submitted,

Gregory Mark Nespole

cc: The Honorable Lewis A. Kaplan
Fred T. Isquith, Esq.
John P. Coffey, Esq.
Thomas J. McKenna, Esq.
David Stickney, Esq.
John A. Kehoe, Esq.
Michael J. Chepiga, Esq.
Paul Curnin, Esq.

GMN:mns/522246

[3] Pursuant to Section 27(a)(3)(B)(i) of the PSLRA, investors who purchases Lehman Preferred J on the Offering or traceable to it must move for the appointment of lead plaintiff and the concomitant selection of lead counsel by November 24, 2008.

EXHIBIT E

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

- -X

NOTICE OF REASSIGNMENT

Fogel Capital Management 08cv8225

V.

Richard Fuld

- -X

Pursuant to the memorandum of the Case Processing Assistant, the above-entitled action is reassigned to the calendar of

Judge Kaplan

All future documents submitted in this action are to be presented in the Clerk's Office of the Southern District Court for filing and shall bear the assigned judge's initials after the case number.

The attorney(s) for the plaintiff(s) are requested to serve a copy of the Notice of Reassignment on all defendants.

J. Michael McMahon, CLERK

Date: 10/7/08

By: **Roberto A. Diaz**
Deputy Clerk

cc: Attorneys of Record