

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OPERATIVE PLASTERERS AND CEMENT
MASONS INTERNATIONAL ASSOCIATION
LOCAL 262 ANNUITY FUND, Individually And
On Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

RICHARD S. FULD, JR.; CHRISTOPHER M.
O'MEARA; JOSEPH M. GREGORY; ERIN
CALLAN; IAN LOWITT; 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; ABN AMRO HOLDING N.V.;
ANZ SECURITIES, INC.; BANC OF AMERICA
SECURITIES LLC; BBVA SECURITIES INC.;
BNY CAPITAL MARKETS, INC.; CABRERA
CAPITAL MARKETS, LLC; CAJA DE
AHORROS Y MONTE DE PIEDAD DE
MADRID; CIBC WORLD MARKETS CORP.;
CITIGROUP GLOBAL MARKETS INC.;
DAIWA SECURITIES SMBC EUROPE
LIMITED; DnB NOR MARKETS; DZ
FINANCIAL MARKETS LLC; RBS
GREENWICH CAPITAL; HARRIS NESBITT
CORP.; HSBC SECURITIES (USA) INC.; HVB
CAPITAL MARKETS, INC.;

(Caption continued on next page)

NO. 08-CV-5523 (LAK)

JURY TRIAL DEMANDED

ECF Filed

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
LEAD PLAINTIFF'S MOTION FOR CONSOLIDATION OF RELATED ACTIONS**

LOOP CAPITAL MARKETS, LLC; MELLON FINANCIAL MARKETS, LLC; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; MIZUHO SECURITIES USA, INC.; MORGAN STANLEY & CO. INC.; nabCAPITAL SECURITIES, LLC; NATIONAL AUSTRALIA BANK LIMITED; RBC DAIN RAUSCHER INC.; SANTANDER INVESTMENT SECURITIES INC.; SCOTIA CAPITAL (USA) INC.; SIEBERT CAPITAL MARKETS; SG CORPORATE & INVESTMENT BANKING; SOVEREIGN SECURITIES CORPORATION, LLC; SUNTRUST ROBINSON HUMPHREY, INC.; TD SECURITIES (USA) LLC; UBS SECURITIES LLC; UTENDAHL CAPITAL PARTNERS, L.P.; WACHOVIA CAPITAL MARKETS, LLC; WELLS FARGO SECURITIES, LLC; WILLIAMS CAPITAL GROUP, L.P.,

Defendants,

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)

STANLEY TOLIN, On Behalf Of Himself 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-10008

BROOKS FAMILY PARTNERSHIP, LLC and
KGT INC. PENSION PLAN AND TRUST, on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

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; CITIGROUP GLOBAL
MARKETS INC.; BANC OF AMERICA
SECURITIES LLC; MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED;
MORGAN STANLEY & CO. INCORPORATED;
UBS SECURITIES LLC; WACHOVIA

No. 08-CV-10206

(Caption continued on next page)

CAPITAL MARKETS, LLC; RBC DAIN
RAUSCHER INC.; SUNTRUST ROBINSON
HUMPHREY, INC. and WELLS FARGO
SECURITIES, LLC,

Defendants.

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The Pension Fund Group, the Lead Plaintiffs in *Operative Plasterers and Cement Masons Int'l Assoc. Local 262 Annuity Fund v. Lehman Brothers Holdings Inc., et al.*, No. 08-CV-5523 (LAK) (the "*Lehman Securities Class Action*"), hereby submits its reply in further support of its motion for consolidation of related cases¹.

I. INTRODUCTION

In its opening papers, Lead Plaintiff established that consolidating *Fogel, Brooks* and *Tolin* with the *Lehman Securities Class Action* is warranted and beneficial.² Each of the three additional class actions assert claims that are already asserted in the Amended Complaint (the "Complaint") in the *Lehman Securities Class Action*. The theories of liability and the securities at issue in the Related Actions are the same, and the parties overlap. Likewise, in its opening papers, Lead Plaintiff established that consolidating all subsequent related actions that are filed in, or transferred to, this Court will promote efficiency and effective case management.

Plaintiff Fogel – who filed the first complaint involving the Series J Offering, the only security at issue in the Related Actions – has expressly consented to consolidation because it "is likely to avoid needless duplication of judicial resources." (*Fogel v. Fuld*, Docket No. 43; *Lehman Securities Class Action*, Docket No. 59). Plaintiff Tolin – who also filed a complaint involving the Series J Offering – has not objected to the Pension Fund Group's motion for consolidation. Nevertheless, the Brooks Group ("Brooks") and

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

² *Fogel Capital Mgmt., Inc. v. Richard Fuld, Jr., et al.*, Case No. 08-cv-08225 (LAK), *Brooks Family P'ship, LLC and KGT Inc. Pension Plan and Trust v. Richard Fuld, Jr., et al.*, Case No. 08-cv-10206 (LAK), and *Stanley Tolin v. Richard Fuld, Jr., et al.*, Case No. 08-cv-10008 (LAK) are referred to as the "Related Actions."

Belmont Holdings Corp. (“Belmont”) oppose consolidation. However, none of their contentions overcome the fact that consolidation of the Related Actions with the *Lehman Securities Class Action* is warranted under Rule 42 and therefore, absent consolidation, there would be inefficiencies and waste of judicial resources.

The fact remains that “consolidation is particularly appropriate in the context of securities class actions if the complaints are based on the same public statements and reports.” *Lowinger v. Global Cash Access Holdings, Inc.*, No. 08 Cv. 3516 (SWK), 2008 U.S. Dist. LEXIS 49169, at *4 (S.D.N.Y. June 26, 2008), quoting *Glauzer v. EVCI Ctr. Colls. Holding Corp.*, 236 F.R.D. 184, 186 (S.D.N.Y. 2006). This case is no exception. Moreover, keeping the actions segregated will give rise to numerous segmented class actions - defeating the very purpose of class actions.

II. ARGUMENT

A. Brooks’ Arguments Against Consolidation Are Without Merit

1. Slight Differences Between Actions Is Not Sufficient To Defeat Consolidation

Courts routinely grant consolidation where there is not complete uniformity between actions. *See Werner v. Satterlee, Stephens, Burke & Burke*, 797 F. Supp. 1196, 1210-1212 (S.D.N.Y. 1992); *Pinkowitz v. Elan Corp.*, No. 02 Civ. 865, 2002 U.S. Dist. LEXIS 14593, at *17 (S.D.N.Y. July 29, 2002) (although certain actions name defendants not otherwise present in other class actions, consolidation was still appropriate); *Linn v. Allied Irish Banks, PLC*, No. 02 Civ. 1738 (DAB), 2004 U.S. Dist. LEXIS 24655, at *7 (S.D.N.Y. Dec. 7, 2004) (consolidation appropriate even if factual allegations and class periods are not identical). Nevertheless, Brooks argues that consolidation is inappropriate here because (1) some of the documents that Lehman filed with the

Securities and Exchange Commission (“SEC”) (the Forms 10-K, 10-Q and 8-K) that are alleged to be false and misleading in connection with the Series P, Series Q and the common stock offerings are not incorporated into the Series J Offering; and (2) the *Lehman Securities Class Action* names additional defendants beyond those named in Brooks’ action. *See* Brooks’ Opp. at 4-6. Such slight differences are easily addressed and do not warrant non-consolidation.

First, Brooks ignores that *all* of the false and misleading document that pertain to the Series J Offering *also pertain* to the Series P, Series Q, and the common stock offerings. *See* ¶¶278-290, 292-302, 304, 306-330. *See also* ¶277.³ Because of the fundamental overlap between the alleged false documents incorporated in the Series J, P, Q and the common stock offerings, consolidation is particularly appropriate. The claims focus on the same statements and raise common issues of law and fact.

Additionally, while Brooks misfocuses on the presence of additional defendants in the *Lehman Securities Class Action*, *all* of the defendants named in the Brooks action are defendants in the *Lehman Securities Class Action*. *See* Appendix A to Motion for Consolidation, *Lehman Securities Class Action*, Docket No. 67-2 (identifying overlapping defendants). Consequently, consolidation will promote efficiency and preserve judicial resources.

2. Contrary To Brooks’ Contention, Consolidation Does Not Heighten The Risk Of Dismissal For Purchasers On The Series J Offering

Brooks contends that the Related Actions should not be consolidated with the *Lehman Securities Class Action* because it would subject the Securities Act allegations relating to the Series J Offering to the heightened pleading requirements of Rule 9(b).

³ “¶” refers to paragraphs in the Complaint in the *Lehman Securities Class Action*.

Brooks is wrong. Indeed, as explained below, Securities Act claims are routinely consolidated and prosecuted through a single complaint. Hypothetical defenses that might be raised by a defendant are not sufficient to avoid consolidation.

As an initial matter, the Securities Act claims pled in the Complaint do not sound in fraud and do not invoke Rule 9(b). Just because the Complaint used the term “false and misleading” in some of its Securities Act allegations does not mean that its Securities Act claims sound in fraud. Rather, this language tracks the statutory language of the Securities Act which, by its terms, provides for liability if a registration statement either “contained an untrue statement of a material fact or omitted to state a material fact . . . necessary to make the statements therein not misleading.” 15 U.S.C. § 77k(a). As recognized by the court in *In re WRT Energy Sec. Litig.*, No. 96 Civ. 3610 (JFK), 2005 WL 332729, at *6 (S.D.N.Y. Feb. 8, 2005), phrases such as “materially incorrect” and “untrue statements” “merely allude to the language in Section 11 of the 1933 Act” and are not enough to implicate Rule 9(b) under *Romach v. Chang*, 355 F.3d 164 (2d Cir. 2004). Even assuming, *arguendo*, that the Securities Act claims sounded in fraud, nothing in *Romach* suggests that consolidation is inappropriate for this reason.⁴

Additionally, Brooks contends that if the Pension Fund Group proves the defendants engaged in fraud, defendants might be without insurance coverage. However, such speculation is irrelevant to the consolidation issue.⁵ Moreover, even if defendants’ insurance policy contains a fraud exclusion, such provisions have generally not precluded recovery in securities class actions because they require an “adjudication.”

⁴ Moreover, nothing will preclude defendants from arguing that Brooks’ actions sounds in fraud.

⁵ Apparently not recognizing the inconsistency in its own position, Brooks elsewhere criticizes Belmont for opening the insurance issues without having actual knowledge of the coverage. See Memorandum of the Brooks Group In Opposition to Belmont Holdings Corp. and Ronald Mizrahi and Harry Lalwani Motion for Appointment as Lead Plaintiff and for Approval of Selection of Lead Counsel, at 4.

3. The Claims Of Series J Purchasers Are Not Prejudiced By Consolidation

Brooks characterizes the *Lehman Securities Class Action* Complaint as “serving up the ‘negative causation’ defense on a silver platter.” Brooks’ Opp. at 14. Such characterizations do not defeat consolidation. Brooks’ contention only demonstrates that it will raise any and all arguments, even if they are detrimental to the class, in its attempt to obtain a role involving the Series J Offering.⁶

Moreover, Brooks distorts the allegations in the Complaint. Brooks conflates the Complaint’s allegations concerning the Securities Act claims with those of the Exchange Act - even though the Complaint expressly separates these claims. *See* Complaint, ¶¶14-15 (“Overview of the Separate Claims”). In fact, none of the paragraphs cited by Brooks as forming the basis for a negative causation defense came from the Securities Act section of the Complaint. *See* Brooks’ Opp. at 12-17 (referencing allegations in ¶¶3, 10 and 482 of the Complaint).

Brooks next conflates the allegations in the Complaint with those included in the *initial* complaint filed on June 18, 2008 by a different plaintiff, and not the operative complaint in this case. However, the initial complaint was superseded by the Complaint. *See Cassin v. Prudential Ins. Co. of Am.*, No. 04 Civ. 2913 (SAS), 2004 U.S. Dist. LEXIS 20975, at * 7 (S.D.N.Y. Oct. 19, 2004) (“An amended complaint supersedes an original complaint and the allegations in plaintiff’s original complaint cannot be used to dismiss plaintiff’s amended complaint. When that occurs, the prior pleading ceases to be a conclusive judicial admission . . . ”); *McDowell v. Cornell Univ.*, No. 03-CV-00286, 2004 U.S. Dist. LEXIS 1312, at *6 (N.D.N.Y. Jan. 27, 2004) (same).

⁶ Defendants have the burden to prove negative causation as an affirmative defense. *See, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 245 F.R.D. 147, 159 n.12 (S.D.N.Y. 2007).

Additionally, contrary to Brooks' contention, the Complaint's allegation that plaintiffs Marsha Kosseff and ACERA "suffered damages when the truth about the Company's financial results was finally revealed near and at the end of the Class Period" does nothing to undermine the damages claims of the Series J purchasers. There simply is no inconsistency between plaintiffs' pleading of loss causation for their Exchange Act claims and defendants' burden to establish the negative-causation defense under the Securities Act.

In short, Brooks' speculation about negative causation is not grounds to have separate class actions, especially because the claims in *Brooks* had already been asserted in the *Lehman Class Action* before Brooks filed its Complaint and the circumstances favoring consolidation are overwhelming.

4. Consolidation Will Streamline Proceedings And Avoid Unnecessary Confusion

Brooks contends that consolidation is inappropriate because the class definition in the *Lehman Securities Class Action* refers to purchases of the securities of Lehman and Lehman subsidiaries. This contention is hardly grounds to defeat consolidation of overlapping claims. Tellingly, the only case cited by Brooks in support of its argument, *Tucker v. Arthur Andersen*, 73 F.R.D. 316 (S.D.N.Y. 1976), is factually inapposite.

In *Tucker*, the plaintiff moved for a joint trial on certain issues alleged to be common in two cases arising out of an embezzlement scheme. The court denied plaintiff's request for consolidation and joint trial on certain allegedly common issues because the question of materiality was different with respect to the alleged misleading statements, as one action was a suit by those who made loans to Black Watch Farms and the other action was a suit by purchasers of Bermec stock. Moreover, *Tucker* found that

consolidation was not appropriate because the proceedings in one action were much more advanced, the trial in one action had been set for months, and one action sought a jury trial while the other did not. These facts are not present here.

The fact remains that Brooks asserted the same claims in a separate complaint that Lead Plaintiffs had already asserted in the Lehman Securities Class Action. There will be no complication of proceedings or unnecessary confusion when the cases are consolidated.

B. Belmont's Recycled Arguments Do Not Defeat Consolidation

Like Brooks, Belmont also raises arguments opposing consolidation. Strangely, Belmont filed an opposition to the motion for consolidation even though the Pension Fund Group did not move to consolidate the case filed by Belmont's counsel, *Stark v. Callan*, No. 08-CV-09793 (LAK). As set forth below, like Brooks, Belmont's arguments are also unpersuasive.

1. Consolidation Of The Related Actions Does Not Circumvent The PSLRA

Contrary to Belmont's argument, consolidation here does nothing to circumvent the PSLRA notice provisions. Indeed, a critical goal of Congress in enacting the PSLRA was to appoint a lead plaintiff early in the litigation and to empower that lead plaintiff to direct the prosecution of the class's claims "as a whole." *See Hevesi v. Citigroup, Inc.*, 366 F.3d 70, 82-83 & n.13 (2d Cir. 2004). Once the lead plaintiff is appointed, the lead plaintiff is vested with authority to prosecute all related claims. *Id.* Here, the Pension Fund Group has done just that. The Pension Fund Group was appointed Lead Plaintiff by this Court on July 31, 2008. (*Lehman Securities Class Action*, Docket No. 18). The Pension Fund Group diligently performed its role by conducting a thorough investigation

and asserting claims and refining the class period as appropriate. *See, e.g., In re Star Gas Sec. Litig.*, No. 3:04-CV-1766 (JBA), 2005 WL 818617, at *7, *19 (D. Conn. Apr. 8, 2005) (lead plaintiffs have discretion to dictate scope of case through subsequent filing of amended complaint). If anything, Belmont's counsel sought to circumvent the PSLRA by first filing a Series J action (along with Series P and Q) in state court after the *Fogel* action was filed so that it would avoid having to publish a PSLRA notice. When the state action was removed to federal court, Belmont's counsel reversed course and filed a blunderbuss complaint that not only alleges claims relating to the Series J offering but 799 other unidentified Lehman offerings (on behalf of a plaintiff who allegedly purchased only Series J shares). As evident by Belmont's own actions to circumvent the PSLRA, its arguments ring hollow.⁷

2. There Should Not Be Two Separate Exchange Act And Securities Act Cases

Belmont further argues that there should be two Lehman cases before this Court - an Exchange Act case and a separate Securities Act case. There is no valid reason to separate the claims arising from a common course of conduct into two separate class

⁷ Belmont's effort to distinguish *Delphi* is misplaced. In *Delphi* - like the matter at bar - the court-appointed lead plaintiffs were appointed pursuant to an order referencing only the Exchange Act. *See Fogel*, Docket No. 63, Coffey Decl. at Ex. P. However, the amended complaint filed by the *Delphi* lead plaintiffs included claims under both the Securities Act and the Exchange Act. The *Delphi* court did not limit lead plaintiffs' ability to assert claims based on PSLRA notices which were premised on complaints asserting only claims under the Exchange Act. *See Delphi*, 458 F. Supp. 2d at 459 n.4 ("As originally filed, neither the Cox action nor any of the companion cases specifically named Delphi Trust I or II as a party-defendant, nor did any of the complaints allege violation of the Securities Act of 1933 as a theory of recovery"). Moreover, Belmont's assertion that the notices in this case are "narrowly drawn" is false. As explained in the Pension Fund Group' Memorandum of Law In Opposition to Motions Seeking Appointment as Lead Plaintiff and Lead Counsel (*Fogel*, Docket No. 62, at 21-23 (filed Dec. 15, 2008)), the initial April 30, 2008 notice in the Lehman Securities Class Action advised "purchasers of securities of Lehman" that an action had been commenced. A subsequent notice, issued on June 18, 2008, clearly stated that it "extends a prior Class Period" and references the lead plaintiff deadline in the original April 30 notice. Thus, the notices broadly cover all investors in Lehman "securities."

actions. Indeed, Courts routinely consolidate Securities Act and Exchange Act cases and prosecute Exchange Act and Securities Act claims in one consolidated action.

For example, in *In re Countrywide Fin. Corp. Deriv. Litig.*, 542 F. Supp. 2d 1160 (C.D. Cal. 2008), the court consolidated cases asserting Securities Act claims relating to preferred stock with cases asserting Exchange Act claims relating to common stock. *Id.* at 1165; *see also, Blackmoss Invs, Inc. v. ACA Capital Holdings, Inc.*, No. 07 Civ. 10528 (RWS), 2008 U.S. Dist. LEXIS 91494 (S.D.N.Y. Aug. 11, 2008) (consolidating actions asserting claims under Sections 11, 12(a)(2) and 15 with an action also asserting claims under the Exchange Act). Likewise, in *Olsen v. New York Cmty. Bancorp, Inc.*, 233 F.R.D. 101 (E.D.N.Y. 2005), the court consolidated various actions even though several of the actions alleged slightly different class periods and named different individual defendants, some of the actions asserted Securities Act claims, some other actions asserted Exchange Act claims, and some asserted claims to both statutes, because “[n]one of these minor differences . . . detracts from the overwhelming factual and legal similarity among the cases.” *Id.* at 105. Likewise, in *Schwartz v. TXU Corp.*, 2004 U.S. Dist. LEXIS 14782 (N.D. Tex. July 30, 2004), the court consolidated thirty securities class actions alleging Exchange Act claims even though some of the actions that were consolidated also alleged Securities Act claims. *Id.*, at *2.

Belmont’s reference to *In re Citigroup Inc. Sec. Litig.*, 07 Civ. 9901 (SHS) is misplaced and easily distinguished from the case at bar. In *Citigroup*, the lead plaintiff filed only 10b-5 fraud claims on behalf of purchasers of just common stock, and did not assert any claims on behalf of purchasers of debt, preferred shares, and depository shares representing preferred shares. To the contrary, here, the Pension Fund Group has bought

claims on behalf of purchasers of common stock, bonds, and preferred shares, and here, members of the Pension Fund Group have suffered losses on all three classes of securities. By contrast, Belmont has purchased just Series J preferred shares, which is but one of the 28 securities included in the Complaint.

III. CONCLUSION

For the reasons stated above, *Fogel, Tolin, and Brooks* should be consolidated for all purposes with the *Lehman Securities Class Action*. Further, to the extent that subsequent related actions are transferred to this Court, or are otherwise deemed to be related to the *Lehman Securities Class Action*, they should also be consolidated subject to the rights of the parties thereto to object.

Dated: January 7, 2008

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/ David R. Stickney

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OPERATIVE PLASTERERS AND CEMENT
MASONS INTERNATIONAL ASSOCIATION
LOCAL 262 ANNUITY FUND, Individually
And On Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

RICHARD S. FULD, JR.; CHRISTOPHER M.
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MARKETS, LLC; CAJA DE AHORROS Y
MONTE DE PIEDAD DE MADRID; CIBC
WORLD MARKETS CORP.; CITIGROUP
GLOBAL MARKETS INC.; DAIWA
SECURITIES SMBC EUROPE LIMITED; DnB
NOR MARKETS; DZ FINANCIAL MARKETS
LLC; RBS GREENWICH CAPITAL; HARRIS
NESBITT CORP.; HSBC SECURITIES (USA)
INC.; HVB CAPITAL MARKETS, INC.;

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NO. 08-CV-5523 (LAK)

JURY TRIAL DEMANDED

ECF Filed

CERTIFICATE OF SERVICE

LOOP CAPITAL MARKETS, LLC; MELLON FINANCIAL MARKETS, LLC; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; MIZUHO SECURITIES USA, INC.; MORGAN STANLEY & CO. INC.; nabCAPITAL SECURITIES, LLC; NATIONAL AUSTRALIA BANK LIMITED; RBC DAIN RAUSCHER INC.; SANTANDER INVESTMENT SECURITIES INC.; SCOTIA CAPITAL (USA) INC.; SIEBERT CAPITAL MARKETS; SG CORPORATE & INVESTMENT BANKING; SOVEREIGN SECURITIES CORPORATION, LLC; SUNTRUST ROBINSON HUMPHREY, INC.; TD SECURITIES (USA) LLC; UBS SECURITIES LLC; UTENDAHL CAPITAL PARTNERS, L.P.; WACHOVIA CAPITAL MARKETS, LLC; WELLS FARGO SECURITIES, LLC; WILLIAMS CAPITAL GROUP, L.P.,

Defendants,

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)

STANLEY TOLIN, On Behalf Of Himself 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-10008

BROOKS FAMILY PARTNERSHIP, LLC and
KGT INC. PENSION PLAN AND TRUST, on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

vs.

RICHARD S. FULD, JR.; MICHAEL L.
AINSLIE; JOHN F. AKERS; ROGER S.
BERLIND; THOMAS H. CRUIKSHANK;
MARSHA JOHNSON EVANS; SIR
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MARKETS INC.; BANC OF AMERICA
SECURITIES LLC; MERRILL LYNCH,
PIERCE, FENNER & SMITH
INCORPORATED; MORGAN STANLEY &
CO. INCORPORATED; UBS SECURITIES
LLC; WACHOVIA

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No. 08-CV-10206

CAPITAL MARKETS, LLC; RBC DAIN
RAUSCHER INC.; SUNTRUST ROBINSON
HUMPHREY, INC. and WELLS FARGO
SECURITIES, LLC,

Defendants.

I, David R. Stickney, hereby certify that on January 7, 2009, I caused the Reply Memorandum Of Law In Further Support Of Lead Plaintiff's Motion For Consolidation Of Related to be filed with the Clerk of the Court and served via ECF in accordance with the Federal Rules of Civil Procedure, the Southern District's Local Rules, and the Southern District's Rules on Electronic Service.

/s/ David R. Stickney
David R. Stickney