

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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09 MD 2017 (LAK)

In re:

ELECTRONICALLY
FILED

LEHMAN BROTHERS SECURITIES AND
ERISA LITIGATION

This Document Applies to: ALL CASES

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**CITY AND COUNTY PLAINTIFFS’
STATUS CONFERENCE STATEMENT**

Plaintiffs San Mateo County Investment Pool, Monterey County Investment Pool, and Zenith Insurance Co. (collectively, “City and County Plaintiffs”) submit this Status Conference Statement to address the topics identified in the Court’s Pretrial Orders.

As discussed herein, the City and County Plaintiffs respectfully request that (1) all individual actions be separately consolidated for all pre-trial purposes, including resolution of the pending remand motions, and (2) their counsel of record – Cotchett, Pitre & McCarthy – be appointed as a fifth member of the Executive Committee, representing the unique interests and claims asserted by the City and County Plaintiffs.

I. Overview

A. Nature of City and County Actions

Unlike the other class actions that comprise these MDL proceedings, the City and County Plaintiffs filed individual actions in California Superior Court relating to their investment losses in Lehman securities. The City and County Plaintiffs' investments were made pursuant to unique California statutes, applicable only to California counties, cities and insurance companies, which regulate the type, amount, duration and custody of investments made by California entities. Accordingly, the suits allege primarily California state law claims. Defendants include certain Lehman officers and directors, as well as Lehman's auditor, Ernst & Young.

B. Procedural Status: Removal and Remand

The City and County Plaintiffs filed their actions in San Francisco County Superior Court. However, defendants removed the actions to the Northern District of California, asserting identical grounds, i.e., that the actions were "related to" Lehman's bankruptcy. The actions were assigned to the Honorable Samuel Conti. The City and County Plaintiffs moved to remand. Judge Conti set a consolidated briefing schedule and the remand motions were fully briefed.

On February 9, 2009, before Judge Conti had ruled on the remand motions, the MDL Panel transferred two of the three cases – those filed by San Mateo County and Zenith Insurance – to this Court for pretrial proceedings. On February 13, 2009, the MDL Panel entered a conditional transfer order ("CTO-1") for the third case – filed by Monterey County – as a tag-along action.

Accordingly, this Court has assigned the following case numbers:

1. *San Mateo County Investment Pool v. Fuld et al.*, S.D.N.Y. Case No. 1:09-cv-01239-LAK
2. *Zenith Insurance Co. v. Fuld, et al.*, S.D.N.Y. Case No. 1:09-cv-01238-LAK
3. *Lou Solton, Monterey County Treasurer, on Behalf of The Monterey County Investment Pool v. Fuld, et al.*, (case number to be assigned once CTO-1 becomes effective on or about March 2, 2009)

C. Other California Cases

In addition to the three actions filed by the City and County Plaintiffs, at least five other California cities or counties have filed similar suits in California Superior Court, based on Lehman investments made pursuant to the same California statutory scheme.

The actions are as follows:

City of South San Francisco v. Citigroup Global Markets, Inc., et al., N.D.Cal. Case No. 09-501 (originally filed in San Francisco Superior Court, removed to Northern District of California and conditionally transferred to this Court)

City of Burbank v. Fuld, et al., San Francisco Superior Court No. 09-485072 (filed in San Francisco County Superior Court, not yet removed)

City of San Buenaventura v. Fuld, et al., San Francisco Superior Court No. 09-485032 (filed in San Francisco County Superior Court, not yet removed)

City of Auburn v. Fuld, et al., San Francisco Superior Court No. 09-485137 (filed in San Francisco County Superior Court, not yet removed)

City of Long Beach v. Fuld, et al., Los Angeles Superior Court No. C-052480 (filed in Los Angeles County Superior Court, not yet removed)

Defendants have indicated their intent to remove all of these cases to federal court, on the same grounds, and ask that they be transferred to this Court as “tag along” actions.

II. Issues Identified In Pretrial Order No. 2

A. Unresolved Motions and Scheduling

As noted above, the City and County Plaintiffs filed remand motions which were fully briefed, yet unresolved, at the time of transfer. Accordingly, the City and County Plaintiffs respectfully request that all remand motions be set for hearing by this Court at the earliest opportunity or, in the alternative, decided on the submitted papers.

This Court's docket indicates that the remand briefs have not yet been electronically transferred by the Northern District of California. If desired by the Court, the City and County Plaintiffs will deliver a bound volume containing courtesy copies of all of the relevant documents filed by the parties and/or electronically file a duplicate set with the Court.¹

Further, at the time of the MDL transfer, remand motions were pending in two other districts, the Western and Eastern Districts of Arkansas, involving class actions filed on behalf of Lehman bondholders raising claims under the Securities Act of 1933. While there is some overlap in the remand issues, they are not identical. For example, while the Arkansas class plaintiffs dispute "related to" jurisdiction based on Lehman's bankruptcy proceedings, the primary issue on remand in the Arkansas cases is whether the actions were removable under SLUSA and CAFA. Conversely, the City and County Plaintiffs alone assert that remand is also appropriate under the district court's equitable powers, 28 U.S.C. § 1452(b), enabling a California state court to resolve state law claims

¹This Court's docket indicates that the Clerk mailed a request to the Northern District of California on February 10, 2009, requesting transfer of the case file.

premised on California's unique statutory scheme governing investments made by California cities, counties and insurers.

B. Consolidation and Organization of Plaintiffs' Counsel

In January 2009, prior to transfer of these individual actions, the Court entered Pretrial Order No. 1. The Court (1) separately consolidated for pretrial purposes each of the three types of class actions, i.e., equity/debt securities litigation, mortgage-backed securities litigation, and ERISA litigation, and (2) consolidated all of the class actions for discovery purposes. Similarly, the Court appointed lead plaintiffs and lead counsel in each of the three types of class actions, and created an Executive Committee composed of representatives from each lead counsel firm, as well as Daniel Girard of Girard, Gibbs, who filed a class action on behalf of purchasers of Lehman Principal Protection Notes.

As noted above, the City and County Actions (and the five others which may be transferred) involve substantially similar legal and factual issues – including those raised in the remand motions. Accordingly, the City and County Plaintiffs request the Court to consolidate the individual actions for pretrial purposes, separate and apart from the class actions – much like the Court ordered separate consolidation of the different types of class actions – which can be referred to collectively as *In re Lehman Brothers California City and County Litigation*. Once consolidated, the *California City and County Litigation* can be consolidated with the class actions for discovery purposes (if remand is denied).

Finally, the City and County Plaintiffs request to be represented, through their counsel, as a fifth member of the Executive Committee. Such inclusion will not prejudice any of the other parties, delay the proceedings, or result in any duplication of effort. To the contrary, representation will promote interests of efficiency and assist any effort to achieve a comprehensive resolution of the case.

The City and County Plaintiffs' losses are substantial – the San Mateo County Investment Fund alone lost more than \$155 million – and there are key differences in the claims and theories asserted, and the defendants named. Thus, Committee representation will facilitate coordination with the class plaintiffs with respect to pleading, presentation of argument, discovery, and settlement negotiations.²

Dated: February 24, 2008

Respectfully submitted,

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²Pursuant to Pretrial Order No. 1, the Executive Committee has already selected a competent Chair. The City and County Plaintiffs do not propose restarting that selection process.