

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

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In re: :
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LEHMAN BROTHERS SECURITIES : **09 MD 2017 (LAK)**
AND ERISA LITIGATION :
: :
This Document Applies to: ALL CASES :
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**BOND PLAINTIFFS’ REPLY IN SUPPORT OF THEIR MOTION TO MODIFY
PRETRIAL ORDER NO. 1 TO PERMIT PROSECUTION OF ABANDONED
BOND CLAIMS ON LEHMAN BONDS ISSUES PRIOR TO FEBRUARY 13, 2007**

In their furious efforts to at all costs insulate themselves from liability for false statements and misrepresentations found in various documents accompanying the bond offerings of Lehman Brothers Holdings Inc. (“Lehman”) predating February 13, 2007, Defendants place much emphasis on the fact that the holders of effectively abandoned claims¹ now before the Court (the “Abandoned Bond Claim Plaintiffs”) did not comply with certain procedural dictates of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4 (the “PSLRA”), when they filed their lawsuits in the state courts of Arkansas. This is completely true, yet of absolutely no import here. More to the point, it is exactly *because* the underlying proceedings began in state court that the PSLRA required nothing of the Abandoned Bond Claim Plaintiffs. Without belaboring the obvious, suffice it to say that the statute applies only to litigation “brought as a plaintiff class action *pursuant to the Federal*

¹The present Lead Plaintiffs have submitted a brief expressing “no position” on whether the Court should permit the Abandoned Bond Claim Plaintiffs to adjudicate claims in connection with bonds issued before February 13, 2007. Nonetheless, Lead Plaintiffs stop short of complete capitulation, as they then expend considerable effort challenging the notion that they have “abandoned” those counts. Semantics aside, it cannot be denied that Lead Plaintiffs have chosen not the pursue these causes of action. Whether this amounts to “abandonment” or might be just as fairly characterized by a euphemism more acceptable to the Lead Plaintiffs, the reality is that the claims are not presently a part of this consolidated action. The Abandoned Bond Claim Plaintiffs have investigated these allegations and are ready to fully concentrate on them now.

Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(1) (emphasis added). Clearly, matters commenced in state court – subject, of course, to the governing procedural rules in a particular state – do not fit this bill. See *Small v. Fritz Cos.*, 65 P.3d 1255, 1261 (Cal. 2003) (“The PSLRA governs only actions in federal court.”); cf. *Weiller v. N.Y. Life Ins. Co.*, 800 N.Y.S.2d 359, 359 (N.Y. Sup. Ct. 2005) (remarking that the PSLRA is not “directly binding” upon a state lawsuit). Consequently, and despite Defendants’ protestations to the contrary, it was never incumbent upon the Abandoned Bond Claim Plaintiffs to publish notice of their suits or take any other actions under the PSLRA,² and their inaction in this regard does not at all detract from their ability to serve as representatives of those who acquired Lehman bonds before February 13, 2007.

Beyond these considerations, it is apparent that the procedural niceties championed by Defendants do not justify the wholesale elimination of valid claims held by those victimized by Lehman. This is particularly so given that any shortcomings under the PSLRA will have no practical effect on the substantive issues at the heart of this action. In this regard, and to the extent the Court may deem it useful to at this juncture consider certifications for the Abandoned Bond Claim Plaintiffs completed in accordance with the PSLRA, it would unquestionably be helpful to reference the documents comprising Exhibit A accompanying this Reply.³ Moreover, it is significant that the

²Defendants are assuredly correct that federal procedure will control in the matter from this day forward, but the PSLRA’s directives upon filing a lawsuit pertain specifically to those cases initially “brought as a plaintiff class action *pursuant to the Federal Rules of Civil Procedure.*” 15 U.S.C. § 78u-4(a)(1) (emphasis added). Try as they might, Defendants will never succeed at altering the historical certainty that the Abandoned Bond Claim Plaintiffs originally filed their actions *pursuant to the Arkansas Rules of Civil Procedure.*

³Specifically, Exhibit A includes signed certifications prepared by Glynn Detherow and Barbara Kattell. The undersigned is in the process of collecting certifications from the remaining Abandoned Bond Claim Plaintiffs. In the meantime, should the Court place importance on the submission of certifications not otherwise required by the PSLRA, the Abandoned Bond Claim

Abandoned Bond Claim Plaintiffs wish to file a pleading seeking to impose liability based upon legal grounds identical to some of those asserted in the Second Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the “Second Amended Complaint”). Essentially, then, what is proposed here is nothing more than an extension of the class period defined in the Second Amended Complaint, and courts have regularly concluded that similar restructuring of securities litigation does not necessitate new notice to the affected class. *See Teamsters Local 445 Freight Div. Pension Fund v. Bombardier Inc.*, 2005 U.S. Dist. LEXIS 10780, at 5 (S.D.N.Y. June 1, 2005) (Scheidlin, J.) (“Courts have generally disfavored republication of notice when a complaint is amended, even where the amendment alters the class period.”); *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 503 (S.D. Fla. 2003) (“[The] filing of subsequent actions alleging different class periods does not require publication of new notice [under the PSLRA].” (alteration in original omitted)); *In re Sunbeam Sec. Litig.*, Case No. 98-9258-CIV-MIDDLEBROOKS, 1998 U.S. Dist. LEXIS 21490, at *6 n.2 (S.D. Fla. Dec. 7, 1998) (same); *Lax v. First Merchs. Acceptance Corp.*, Case Nos. 97-C-2715, 97-C-2716, 97-C-2737, 97-C-2791, 97-C-2836, 97-C-2981, 97-C-2984, 97-C-3078, 97-C-3738, 97-C-3767, 97-C-4013, 97-C-4236, 97-C-4237, 1997 U.S. Dist. LEXIS 11866, at *14 (N.D. Ill. Aug. 11, 1997) (“[T]he court finds that requiring published notices for complaints that merely expand the class period . . . would be *inconsistent with the purposes of the PSLRA.*” (emphasis added)).

What is more, and notwithstanding the arguments made in Defendants’ opposition to the motion, it is important to keep in mind that the Abandoned Bond Claim Plaintiffs are not asking this

Plaintiffs respectfully submit that the Court might initially appoint Mr. Detherow and Ms. Kattell as Lead Plaintiffs for the class of investors who purchased bonds before February 13, 2007, subject to the receipt of additional certifications from their peers.

Court to revisit the lead plaintiff structure established for the action styled *In re Lehman Brothers Equity/Debt Securities Litigation*, 08 Civ. 5523 (LAK). To be clear, the motion at bar does not invite the Court to make any changes to the representatives spearheading claims on behalf of the class identified in the Second Amended Complaint; rather, it seeks the court's authorization to advance claims for a different group altogether. *Cf., e.g.*, 15 U.S.C. § 78u-4(a)(3)(B)(I) (describing the lead plaintiff as a "member . . . of the purported plaintiff class" with the ability to "adequately represent[] the interests of class members"); *Cyberguard*, 213 F.R.D. at 490 ("[T]he law requires only that the claims *actually litigated* in the lawsuit must be those *fairly represented by the named plaintiffs.*" (emphasis added)). Indeed, it is without question that the Abandoned Bond Claim Plaintiffs could not qualify as additional lead plaintiffs advocating the Second Amended Complaint, in that they are not "members of the purported plaintiff class" detailed in that document, 15 U.S.C. § 78u-4(a)(3)(B)(I); likewise, they and those like them currently lack any representation in this case. Their pending motion seeks to remedy that situation.

Finally, Defendants strive to pin significance on their suggestion that the Abandoned Bond Claim Plaintiffs do not have standing to litigate the multiple bond offerings Lehman initiated earlier than February 13, 2007. Still, controlling authorities demonstrate that these type of considerations play no legitimate role in determining the lead plaintiff for a securities action. Most tellingly, the United States Court of Appeals for the Second Circuit (the "Second Circuit") left little room for disagreement on this point when it emphasized that "[n]othing in the PSLRA indicates that district courts must choose a lead plaintiff with standing to sue on every available cause of action." *Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82 (2d Cir. 2004). In fact, the Second Circuit proceeded to conclude, "[I]t is inevitable that, in some cases, the lead plaintiff will not have standing to sue on every claim."

Id. Thus, although it may eventually become relevant to question whether the lead and named plaintiffs have standing to sue for designated Lehman bond offerings prior to February 13, 2007,⁴ that topic is presently a nullity.

Consequently, for the reasons addressed in this Reply and in the original Memorandum filed in support of their Motion to Modify Pretrial Order No. 1 to Permit Prosecution of Abandoned Bond Claims on Lehman Issues Bonds Prior to February 13, 2007, the Abandoned Bond Claim Plaintiffs respectfully request that the Court permit them to litigate on behalf of a class of bondholders Securities Act claims arising from Lehman bond issuances predating February 13, 2007, to allow their undersigned counsel to pursue those claims on behalf of the class, and to appoint J. Allen Carney of Carney, Williams, Bates, Bozeman & Pulliam, PLLC to serve as their representative on the Executive Committee in this proceeding.⁵

⁴Defendants also complain that the Abandoned Bond Claim Plaintiffs have not enumerated the exact bond offerings with which they take issue. Here again, though, Defendants have placed the cart before the horse. If this Court allows the Abandoned Bond Claim Plaintiffs to file a complaint as requested in their motion, it will unquestionably list every challenged transaction.

⁵The present Lead Plaintiffs vigorously resist Mr. Carney's addition to the Executive Committee. With all due respect, however, the Abandoned Bond Claim Plaintiffs believe that their appointment as representatives for a significant number of investors justifies direct participation on the Executive Committee.

DATED: April 22, 2009

Respectfully submitted,

ROY JACOBS & ASSOCIATES

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CERTIFICATE OF SERVICE

I, Roy L. Jacobs, hereby certify that on April 22, 2009, I served a copy of the foregoing submission on all parties appearing by the ECF system in the action by ECF filing.

/s/ Roy L. Jacobs
Roy L. Jacobs

CERTIFICATION OF PROPOSED LEAD PLAINTIFF

1. I, Barbara Kattell, declares the following as to the claims asserted, or to be asserted, under the federal securities laws:

2. I have reviewed the class action complaint asserting claims arising from the Lehman Bros Holdings Inc. Nts Int Rate 6.625% Maturing 07/27/2027 ("Lehman Brothers Bonds")

3. I did not acquire the Lehman Brothers Bonds at the direction of plaintiff's counsel or in order to participate in any private action or litigation.

4. I am willing to serve as a lead plaintiff either individually or as part of a group. A lead plaintiff is a representative party who acts on behalf of other class members in directing the action, and whose duties may include testifying at deposition and trial, if necessary.

5. I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the court pursuant to law.

5. I have not sought to serve or served as a representative party for a class in an action under the federal securities laws within the past three years.

6. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is unaffected by my decision to serve as a representative party.

7. During the period July 9, 2007 through today's date, I have made the following transactions in Lehman Brothers Bonds.

| Face Amount Of Bonds | Buy/Sell | Date | Price Per Share |
|----------------------|----------|----------|-----------------|
| \$10,000 | Bought | 07/17/07 | 100.50 |
| | | | |

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of October, 2008.

By: Barbara Kattell
Barbara Kattell

CERTIFICATION OF PROPOSED LEAD PLAINTIFF

GLYNN W.

1. I, DEJHEROW, declares the following as to the claims asserted, or to be asserted, under the federal securities laws:

2. I have reviewed the class action complaint asserting claims arising from the Lehman Bros Holdings Inc. Notes Maturing 06/21/2037 ("Lehman Brothers Bonds").

3. I did not acquire the Lehman Brothers Bonds at the direction of plaintiff's counsel or in order to participate in any private action or litigation.

4. I am willing to serve as a lead plaintiff either individually or as part of a group. A lead plaintiff is a representative party who acts on behalf of other class members in directing the action, and whose duties may include testifying at deposition and trial, if necessary.

5. I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the court pursuant to law.

5. I have not sought to serve or served as a representative party for a class in an action under the federal securities laws within the past three years.

6. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is unaffected by my decision to serve as a representative party.

7. During the relevant period through today's date, I have made the following transactions in Lehman Brothers Bonds.

| Face Amount Of Bonds | Buy/Sell | Date | Price Per Share |
|----------------------|----------|----------|-----------------|
| \$20,000 | Bought | 06/21/07 | 100.00 |
| | | | |

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of October, 2008.

By: Glynn W DeJherow