

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

In re:)
)
)

LEHMAN BROTHERS SECURITIES AND)
ERISA LITIGATION)
)

Docket No.: 09-MD-2017 (LAK)

This Document Applies to:)
)

ECF Case

*In re Lehman Brothers Mortgage-Backed)
Securities Litigation, No 08-CV-6762.)
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**MEMORANDUM OF LAW IN SUPPORT OF LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF OPERATING ENGINEERS –
EMPLOYERS CONSTRUCTION INDUSTRY RETIREMENT TRUST
MOTION FOR SUBSTITUTION OF LEAD COUNSEL**

Joel P. Laitman (JL-8187)
Christopher Lometti (CL-9124)
Daniel B. Rehns (DR-5506)
COHEN MILSTEIN SELLERS & TOLL PLLC
150 East 52nd Street, Suite 30th Floor
New York, NY 10022
Telephone: (212) 838-7797
Facsimile: (212) 838-7745
jlaitman@cohenmilstein.com
clometti@cohenmilstein.com
drehns@cohenmilstein.com

*Counsel for Movant and Proposed Lead Counsel for
the Class*

Locals 302 and 612 of the International Union of Operating Engineers – Employers Construction Industry Retirement Trust (“Operating Engineers”) respectfully submits this memorandum of law in support of its motion for substitution of lead counsel.

By order dated January 9, 2009, this Court appointed Operating Engineers as lead plaintiff and approved of the Operating Engineers’ choice of counsel at the time, Schoengold Sporn Laitman & Lometti, P.C. (“SSLL”), as lead counsel.

Christopher Lometti and Joel Laitman were the partners at SSLL who were primarily responsible for prosecuting this case and who had primary responsibility for the attorney-client relationship between Operating Engineers and SSLL. However, on April 8, 2009, Messrs. Lometti and Laitman terminated their employment with SSLL, and on April 9, 2009, they joined Cohen Milstein Sellers & Toll PLLC (“CMST”) as Of Counsel.

On May 5, 2009, Operating Engineers terminated their relationship with SSLL and retained CMST to represent them in this matter. CMST is a 50-lawyer firm with offices in New York, Washington, D.C., Chicago and Philadelphia. The firm has practiced in the area of securities class action litigation for over twenty years. They, along with Messrs. Lometti and Laitman, possess substantial experience in this area. As a result, it is respectfully submitted that Operating Engineers motion for substitution of lead counsel be granted and that their selection of CMST as lead counsel be approved.

The amendments to the Securities Act vest authority in the lead plaintiff to select and retain lead counsel, subject to the approval of the court. *See* Securities Act §27(a)(3)(B)(v), 15 U.S.C. §77z-1(a)(3)(B)(v). A court should not disturb the lead plaintiff’s choice of counsel unless necessary to protect the interests of the plaintiff class. In the present case, Operating Engineers has now retained CMST as Lead Counsel to pursue this litigation on its behalf and that

of the class. As stated above, CMST has extensive experience in both securities and complex commercial litigation. As a result, Operating Engineers' choice of counsel should not be disturbed.

CONCLUSION

For all the foregoing reasons, the Lead Plaintiff respectfully requests that the Court CMST's motion for substitution of counsel and approve the Operating Engineers' selection of Cohen Milstein Sellers & Toll, PLLC as lead counsel and grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 8, 2009

Respectfully submitted,

COHEN MILSTEIN SELLERS & TOLL PLLC

By: /s/ Christopher Lometti

Joel P. Laitman (JL-8187)
Christopher Lometti (CL-9124)
Daniel B. Rehns (DR-5506)

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New York, NY 10022
Telephone: (212) 838-7797
Facsimile: (212) 838-7745
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clometti@cohenmilstein.com
drehns@cohenmilstein.com

*Counsel for Movant and Proposed Lead Counsel for
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CERTIFICATE OF SERVICE

I, Christopher Lometti, counsel for the Plaintiff, hereby certify that on May 8, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses of all counsel of record in this action, and also that a copy of the foregoing was served upon Samuel P. Sporn via first-class mail. Furthermore, I hereby certify that the foregoing was served upon the Lead Plaintiff in this matter.

/s/ Christopher Lometti

Christopher Lometti