

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

**MEMORANDUM IN
SUPPORT OF PLAINTIFFS'
MOTION FOR LIMITED
RELIEF FROM THE PSLRA
DISCOVERY STAY**

This Document Applies to:

San Mateo County Investment Pool v. Fuld et al.,
S.D.N.Y. Case No. 1:09-cv-01239-LAK

Zenith Insurance Co. v. Fuld, et al.,
S.D.N.Y. Case No. 1:09-cv-01238-LAK

*Lou Solton, Monterey County Treasurer, on Behalf of
The Monterey County Investment Pool v. Fuld, et al.*,
S.D.N.Y. Case No. 1:09-cv-01944-LAK

City of Auburn v. Fuld, et al.
S.D.N.Y. Case No. 1:09-cv-03474-LAK

City of Burbank v. Fuld, et al.
S.D.N.Y. Case No. 1:09-cv-03475-LAK

City of San Buenaventura v. Fuld, et al.
S.D.N.Y. Case No. 1:09-cv-03476-LAK

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Plaintiffs San Mateo County Investment Pool, Monterey County Investment Pool, City of Auburn, City of Burbank, City of San Buenaventura, and Zenith Insurance Company (collectively, “Plaintiffs”) respectfully submit this memorandum in joinder and support of the Equity/Debt Class Plaintiffs’ motion seeking limited relief from the PSLRA stay in *In re Lehman Brothers Equity/Debt Securities Litigation*, 08-CV-5523-LAK (Dkt. No. 189).

In 2008, Plaintiffs – five California cities and counties and one insurer – filed individual complaints in San Francisco Superior Court based on their investment losses in Lehman Brothers (the “Individual Actions”). Plaintiffs alleged California state common law claims for fraud, negligent misrepresentation, and breach of fiduciary duty, violation of California Corporations Code § 25400 *et seq.*, and violation of Sections 11 and 15 of the Securities Act.

Defendants removed the Individual Actions to federal court. In February 2009, the MDL Panel transferred the Individual Actions to this Court “for coordinated or consolidated pretrial proceedings with the actions pending there.” In April 2009, the Court denied Plaintiffs’ motion to remand.

As a result, the Individual Actions are governed by Pretrial Order No. 1 (“PTO No. 1”) which, among other things, consolidated all actions for discovery purposes and suspended discovery absent a court order. See PTO No. 1 at ¶¶1.2, 2.4-2.5. Thus, while Plaintiffs are not subject to the PSLRA’s stay on discovery applicable to class actions, they are essentially in the same position as class plaintiffs and unable to conduct discovery or engage in Rule 26 pretrial disclosures absent court order.

The same reasons cited by the Equity/Debt Class Plaintiffs to permit limited discovery in the class actions exist with equal force in the Individual Actions, allowing all interested parties to

have access to the same information disclosed in other proceedings in order to properly evaluate the case and promote settlement efforts. Conversely, there is minimal burden on the producing parties, who have already produced the same documents to others in other proceedings. Indeed, limited discovery is particularly compelling with respect to Plaintiffs – who represent millions of California residents, with hundreds of millions of dollars in damages – since they would not otherwise be impacted by a discovery stay absent their consolidation with the class actions.

Accordingly, in the event the Court grants the Equity/Debt Class Plaintiffs' motion and permits limited discovery in the class actions, Plaintiffs respectfully request the Court to grant the same relief and permit limited discovery in the Individual Actions.

Dated: October 23, 2009

COTCHETT, PITRE & McCARTHY

By: s/ Imtiaz A. Siddiqui
Imtiaz A. Siddiqui
100 Park Avenue, Suite 2600
New York, NY 10017
Telephone: (212) 682-3198
Facsimile: (646) 219-6678
isiddiqui@cpmlegal.com

Joseph W. Cotchett
Nancy L. Fineman
Mark C. Molumphy
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
nfineman@cpmlegal.com
mmolumphy@cpmlegal.com

*Attorneys for Plaintiffs San Mateo County,
Monterey County, Zenith Insurance Company,
Auburn, Burbank and San Buenaventura*