

JUDGE KAPLAN

09 CV 1239

A CERTIFIED TRUE COPY  
ATTEST  
By Jakeia Mells on Feb 09, 2009  
FOR THE UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

FLD  
S. Def. 124  
2/10/09

UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

Feb 09, 2009

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

FILED  
CLERK'S OFFICE

08-5353 SC

IN RE: LEHMAN BROTHERS HOLDINGS, INC.,  
SECURITIES & EMPLOYEE RETIREMENT  
INCOME SECURITY ACT (ERISA) LITIGATION

FILED

MDL No. 2017

MAR 11 2009

TRANSFER ORDER

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Before the entire Panel**<sup>\*</sup>: Ten individual defendants<sup>1</sup> affiliated with Lehman Brothers Holdings, Inc. (Lehman Brothers) have moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of this litigation in the Southern District of New York. Responding defendants join in the motion. Plaintiffs in the three Southern District of New York and one Eastern District of New York ERISA or "Structured Notes" actions agree that centralization is appropriate, but ask that these actions be coordinated, rather than consolidated, with the other actions in this litigation, because these plaintiffs' actions (1) have distinct legal causes of action with different burdens of pleading and proof or (2) involve different types of securities. Plaintiffs in the six Arkansas actions and the two California actions oppose the motion, arguing that (1) their actions do not share sufficient questions of fact with the other actions in this litigation, and/or (2) motions to remand their actions to state court are pending.

This litigation presently consists of seventeen actions listed on Schedule A and pending in five districts as follows: eight actions in the Southern District of New York, five actions in the Western District of Arkansas, two actions in the Northern District of California and one action each in the Eastern District of Arkansas and the Eastern District of New York.<sup>2</sup>

After considering all argument of counsel, we find that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Southern District of New York will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions share factual questions relating to whether defendants allegedly made materially false and/or misleading statements which had a negative impact on Lehman Brothers securities. Whether

<sup>\*</sup> Judges Heyburn, Hansen and Damrell took no part in the disposition of this matter.

<sup>1</sup> 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 and Christopher O'Meara.

<sup>2</sup> The Panel has been notified that five related actions have recently been filed. These actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

A CERTIFIED COPY  
J. MICHAEL McMAHON, CLERK  
BY *Catherine Lapley*  
DEPUTY CLERK

the actions are brought by securities holders seeking relief under the federal securities laws or participants in Lehman Brothers's retirement savings plans suing for violations of the Employee Retirement Income Security Act of 1974, all actions can be expected to focus on a significant number of common events, defendants, and/or witnesses. Centralization under Section 1407 will eliminate duplicative discovery; avoid inconsistent pretrial rulings, including on the issue of class certification; and conserve the resources of the parties, their counsel and the judiciary.

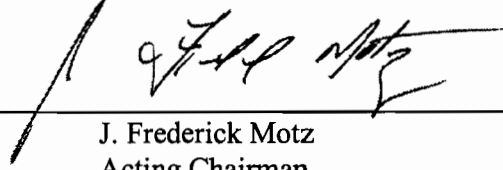
Some opposing plaintiffs express reservations concerning the management of their actions in this MDL proceeding, because their actions involve different types of Lehman Brothers's securities or legal claims. Transfer to a single district under Section 1407, however, has the salutary effect of placing all related actions before one court which can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 2) ensures that pretrial proceedings will be conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. The MDL No. 2017 transferee court can employ any number of pretrial techniques – such as establishing separate discovery and/or motion tracks – to efficiently manage this litigation. Plaintiffs' concerns regarding the manner and extent of coordination or consolidation of the pretrial proceedings can be presented to the transferee judge. The governing statute contemplates transfer for “coordinated or consolidated pretrial proceedings.” 28 U.S.C. § 1407(a). Accordingly, we leave the extent of coordination or consolidation of the securities and ERISA actions to the discretion of the transferee judge. *See In re The Bear Stearns Companies Inc. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation*, 572 F.Supp.2d 1377 (J.P.M.L. 2008); *In re Mutual Funds Litigation*, 310 F.Supp.2d 1359 (J.P.M.L. 2004); *In re Equity Funding Corp. of America Securities Litigation*, 375 F.Supp. 1378 (J.P.M.L. 1974).

Plaintiffs can also present any remand motions to the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

We are persuaded that the Southern District of New York is an appropriate transferee district for this litigation, because (1) eight of the seventeen actions are already pending there, and (2) Lehman Brothers is headquartered in New York City and accordingly parties, witnesses and documents may be found there.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Southern District of New York are transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Lewis A. Kaplan for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



---

J. Frederick Motz  
Acting Chairman

John G. Heyburn II, Chairman\*  
Kathryn H. Vratil  
W. Royal Furgeson, Jr.

Robert L. Miller, Jr.  
David R. Hansen\*  
Frank C. Damrell, Jr.\*

**IN RE: LEHMAN BROTHERS HOLDINGS, INC.,  
SECURITIES & EMPLOYEE RETIREMENT INCOME  
SECURITY ACT (ERISA) LITIGATION**

MDL No. 2017

**SCHEDULE A**

Eastern District of Arkansas

Glen Deathrow, et al. v. Richard S. Fuld, Jr., et al., C.A. No. 4:08-4149

Western District of Arkansas

Cecil Mease, et al. v. Richard S. Fuld, Jr., et al., C.A. No. 2:08-2123

Cecil Mease v. Richard S. Fuld, Jr., et al., C.A. No. 2:08-2124

Michael Shipley v. Richard S. Fuld, Jr., et al., C.A. No. 2:08-2125

Guy S. Warden, Jr. v. Richard S. Fuld, Jr., et al., C.A. No. 2:08-2126

Henry Napierala, et al. v. Richard S. Fuld, Jr., et al., C.A. No. 2:08-2127

Northern District of California

Zenith Insurance Co. v. Richard S. Fuld, Jr., et al., C.A. No. 3:08-5352

The San Mateo County Investment Pool v. Richard S. Fuld, Jr., et al., C.A. No. 3:08-5353

Eastern District of New York

Michael Swiskay, et al. v. Citigroup Global Markets, Inc., et al., C.A. No. 2:08-4600

Southern District of New York

Operative Plasterers & Cement Masons International Association Local 262 Annuity Fund v.

Lehman Brothers Holdings, Inc., et al., C.A. No. 1:08-5523

Alex E. Rinehart, et al. v. Lehman Brothers Holdings, Inc., et al., C.A. No. 1:08-5598

Fogel Capital Management, Inc. v. Richard S. Fuld, Jr., et al., C.A. No. 1:08-8225

Anthony Peyser v. Richard S. Fuld, Jr., et al., C.A. No. 1:08-9404

Stephen P. Gott v. UBS Financial Services, Inc., et al., C.A. No. 1:08-9578

Jeffrey Stark, et al. v. Erin Callan, et al., C.A. No. 1:08-9793

Stanley Tolin v. Richard S. Fuld, Jr., et al., C.A. No. 1:08-10008

Enrique Azpiazu v. UBS Financial Services, Inc., et al., C.A. No. 1:08-10058

**Judicial Panel on Multidistrict Litigation - Panel Attorney Service List  
for  
MDL 2017 - IN RE: Lehman Brothers Holdings, Inc., Securities & Employee Retirement**

**\*\*\* Report Key and Title Page \*\*\***

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

**Party Representation Key**

- \* Signifies that an appearance was made on behalf of the party by the representing attorney.
  - # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
- All counsel and parties no longer active in this litigation have been suppressed.

**This Report is Based on the Following Data Filters**

Docket: 2017 - Lehman Brothers Holdings, Inc., SEC & ERISA

For Open Cases

**Judicial Panel on Multidistrict Litigation - Panel Attorney Service List**

Page 1

Docket: 2017 - IN RE: Lehman Brothers Holdings, Inc., Securities &amp; Employee Retirement Income Security Act (ERISA) Litigation

Status: Transferred on 02/09/2009

Transferee District: NYS Judge: Kaplan, Lewis A.

Printed on 02/09/2009

**ATTORNEY - FIRM****REPRESENTED PARTY(S)**

Banca IMI S.P.A.,  
Piazzetta Giordano  
Dell' Amore #3  
Milan, Italy 20112

=>  
Banca IMI S.P.A.

Bashian, James V.  
LAW OFFICES OF JAMES V BASHIAN PC  
500 Fifth Avenue  
Suite 27000  
New York, NY 10110

=>Phone: (212) 921-4110 Fax: (212) 921-4249 Email: Jbashian@bashianlaw.com  
Peysler, Anthony\*

Caja de Ahorros Y Monte,  
Plaza De Celenque 2  
Madrid, E-28013 Spain

=>  
Caja de Ahorros Monte de Piedad de Madrid

Chepiga, Michael J.  
SIMPSON THACHER & BARTLETT LLP  
425 Lexington Avenue  
New York, NY 10017-3954

=>Phone: (212) 455-2000 Fax: (212) 455-2502 Email: mchepiga@stblaw.com  
Ainslie, Michael L.\*; Akers, John F.\*; Berlind, Roger S.\*; Board of Directors Lehman Brothers Holding, Inc.; Cruikshank, Thomas H.\*; Employee Benefit Plans Committee; Evans, Marsha Johnson\*; Gent, Sir Christopher\*; Goldfarb, David\*; Grundhofer, Jerry A.\*; Hernandez, Roland A.\*; Kaufman, Henry\*; Lehman Brother Holding, Inc. Employee Benefits Plans Committee; Lehman Brothers Holdings Inc.; Lowitt, Ian\*; Macomber, John D.\*; O'Meara, Christopher M.\*; Uvino, Wendy M.\*

DZ Finanical Markets, LLC,  
609 Fifth Avenue  
New York, NY 10017-1021

=>  
DZ Finanical Markets, LLC

Daiwa Securities SMBC,  
5 King William Street  
London EC4N 7AX, United Kingdom

=>  
Daiwa Securities SMBC Europe, Ltd.

Eisenhofer, Jay W.  
GRANT & EISENHOFER PA  
485 Lexington Avenue  
29th Floor  
New York, NY 10017

=>Phone: (646) 722-8500 Fax: (646) 722-8501 Email: jeisenhofer@gelaw.com  
Rooney, Kathy; Stark, Jeffrey

Farrell, Scott J.  
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
270 Madison Avenue  
New York, NY 10016

=>Phone: (212) 545-4600 Fax: (212) 545-4653 Email: farrell@whafh.com  
Buzzo, Jo Anne\*; Demizio, Linda\*; DeSousa, Maria\*; Fong, Monique Miller\*; Rinehart, Alex E.\*

Fier, Seth D.  
PROSKAUER ROSE LLP  
1585 Broadway  
New York, NY 10036

=>Phone: (212) 969-3231 Fax: (212) 969-2900 Email: sfier@proskauer.com  
Callan, Erin\*

Girard, Daniel C.  
GIRARD GIBBS LLP  
601 California Street

=>Phone: (415) 981-4800 Fax: (415) 981-4846 Email: dcg@girardgibbs.com  
Gott, Stephen P.\*

**ATTORNEY - FIRM**

**REPRESENTED PARTY(S)**

Suite 1400  
San Francisco, CA 94108

Hynes, Patricia  
ALLEN & OVERY LLP  
1221 Avenue of the Americas  
New York, NY 10020

=>Phone: (212) 610-6300 Email: patricia.hynes@newyork.allenoverly.com  
Fuld, Jr., Richard S.\*

Jackson Securities, LLC,  
100 Auburn Avenue, N.E.  
Atlanta, GA 30303

=>  
Jackson Securities, LLC

Kavaler, Thomas J.  
CAHILL GORDON & REINDEL LLP  
80 Pine Street  
New York, NY 10005

=>Phone: (212) 701-3006 Fax: (212) 269-5420 Email: Tkavaler@cahill.com  
Edward D. Jones & Co., L.P.\*

Kehoe, John Anthony  
SCHIFFRIN BARROWAY TOPAZ & KESSLER LLP  
280 King of Prussia Road  
Radnor, PA 19087

=>Phone: (610) 822-0273 Fax: (610) 667-7056  
Fire & Police Pension Association of Colorado & Brockton Contributory Retirement System;  
Operative Plasterers & Cement Masons Interanational Association Local 262 Annuity Fund

King, Marshall R.  
GIBSON DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, NY 10166

=>Phone: (212) 351-4000 Fax: (212) 351-4035 Email: mking@gibsondunn.com  
UBS Financial Services, Inc.\*

Lowenthal, Mitchell A.  
CLEARY GOTTLIEB STEEN & HAMILTON LLP  
One Liberty Plaza  
New York, NY 10006

=>Phone: (212) 225-2760 Fax: (212) 225-3999 Email: mlowenthal@cgsh.com  
A.G. Edwards & Sons, Inc.\*; ABN AMRO Holding N.V.\*; ABN AMRO Inc.\*; ANZ Securities, Inc.\*; B.C. Ziegler & Co.\*; Banc of America Securities, LLC\*; BBVA Securities, Inc.\*; BNY Capital Markets, Inc.\*; Cabrera Capital Markets, LLC\*; Calyon Securities (USA), Inc.\*; Charles Schwab & Co., Inc.\*; Charles Schwab & Co., L.P.; CIBC World Markets Corp.\*; Citigroup Global Markets Corp.\*; Citigroup Global Markets, Inc.\*; Commerzbank Capital Markets Corp.\*; Countrywide Securities Corp.\*; Credit Suisse (USA), Inc.\*; D.A. Davidson & Co.\*; Davenport & Co., LLC\*; DnB NOR Markets\*; Ferris Baker Watts & Inc.\*; Fidelity Capital Markets Services\*; Fifth Third Securities, Inc.\*; Fixed Income Securities, Inc.\*; Fortis Securities, LLC\*; H&R Block Financial Advisors, Inc.\*; Harris Nesbitt Corp.\*; HSBC Securities (USA), Inc.\*; HVB Capital Markets, Inc.\*; Hypo Capital Markets, Inc.\*; Janney Montgomery Scott, LLC\*; Keefe Bruyette & Woods, Inc.\*; Keybank Capital Markets, Inc.\*; LaSalle Financial Services, Inc.\*; Loop Capital Markets, LLC\*; Maxim Group, LLC\*; Mellon Financial Markets, LLC\*; Merrill Lynch, Pierce, Fenner & Smith, Inc.\*; Mesirow Financial, Inc.\*; Mizuho Securities USA, Inc.\*; Morgan Keegan & Co., Inc.\*; Morgan Stanley & Co., Inc.\*; Muriel Siebert & Co., Inc.\*; nabCapital Securities, LLC\*; National Australia Bank, Ltd.\*; National Australia Capital Markets, LLC\*; National Financial Services, LLC; Oppenheimer & Co., Inc.\*; Piper Jaffray & Co.; Raymond James & Associates, Inc.\*; RBC Dain Rauscher, Inc.\*; RBS Greenwich Capital\*; Robert W. Baird & Co., Inc.\*; Santander Investment Securities, Inc.\*; Scott & Stringfellow, Inc.; SG Americas Securities, LLC\*; SG Corporate & Investment Banking\*; Siebert Capital Markets\*; SMH Capital, Inc.\*; Sovereign Securities Corp., LLC\*; Standard Chartered Bank\*; Stifel, Nicolaus & Co., Inc.\*; Stone & Youngberg, LLC\*; Suntrust Capital Markets, Inc.\*; SunTrust Robinson Humphrey, Inc.\*; TD Ameritrade Holding Corp.\*; TD Securities (USA), LLC\*; UBS Securities, LLC\*; Utendahl Capital Partners LP\*; Vining Sparks IBG, LP\*; Wachovia Capital Markets, LLC\*; Wachovia Securities, LLC; Wells Fargo Securities LLC\*; Williams Capital Group, L.P. (The)\*; Zions Direct, Inc.\*

Molumphy, Mark C.  
COTCHETT PITRE & MCCARTHY

=>Phone: (650) 697-6000 Fax: (650) 697-0577 Email: mmolumphy@cpmlegal.com  
San Mateo County Investment Pool (The)\*; Zenith Insurance Co.\*

**ATTORNEY - FIRM**

**REPRESENTED PARTY(S)**

840 Malcolm Road  
Suite 200  
Burlingame, CA 94010

Nespole, Gregory M.  
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
270 Madison Avenue  
New York, NY 10016

=>Phone: (212) 545-4600 Fax: (212) 545-4653  
Fogel Capital Management, Inc.

Notis, James Stuart  
GARDY & NOTIS LLP  
440 Sylvan Avenue  
Suite 110  
Englewood Cliffs, NJ 07632

=>Phone: (201) 567-7377 Fax: (201) 567-7337 Email: jnotis@gardylaw.com  
Tolin, Stanley

Pulliam, Randall K.  
CAULEY BOWMAN CARNEY & WILLIAMS LLP  
11311 Arcade Drive  
Suite 200  
Little Rock, AR 72212-5438

=>Phone: (501) 312-8500 Fax: (501) 312-8505 Email: rpulliam@cauleybowman.com  
Caldwell, Rena\*; Deathrow, Glen\*; Dimodica, Madeline\*; Kattell, Barbara\*; Mease, Cecil\*;  
Napierala, Henry\*; Napierala, Linda\*; Shipley, Michael\*; Warden, Jr., Guy S.\*

Silk, Gerald H.  
BERNSTEIN LITOWITZ BERGER & GROSSMAN LLP  
1285 Avenue of the Americas  
38th Floor  
New York, NY 10019

=>Phone: (212) 554-1400 Fax: (212) 554-1444 Email: jerry@blbglaw.com  
Alameda County Employees' Retirement Association; American European Insurance Co.; Brockton  
Contributory Retirement System; City of Edinburgh Council as Administering Authority of the  
Lothian Pension Fund (The); Government of Guam Retirement Fund; Inter-Local Pension Fund  
Graphic Communications Conference of the International Brotherhood of Teamsters; Kosseff,  
Marsha; Northern Ireland Local Governmental Officers Superannuation Committee; Operating  
Engineers Local 3 Trust Fund; Pension Fund Group (The); Police & Fire Retirement System of the  
City of Detroit; Teamsters Allied Benefit Funds

Speirs, Richard A.  
ZWERLING SCHACHTER & ZWERLING LLP  
41 Madison Avenue  
New York, NY 10010

=>Phone: (212) 223-3900 Fax: (212) 371-5969 Email: rspeirs@zsz.com  
Azpiazu, Enrique\*; Swiskay, Judith\*; Swiskay, Michael\*

Strauss, Audrey  
FRIED FRANK HARRIS SHRIVER & JACOBSON LLP  
One New York Plaza  
New York, NY 10004

=>Phone: (212) 859-8862 Fax: (212) 859-8585  
Gregory, Joseph M.

Wald, Peter A.  
LATHAM & WATKINS LLP  
505 Montgomery Street  
Suite 2000  
San Francisco, CA 94111-2562

=>Phone: (415) 391-0600 Fax: (415) 395-8095 Email: peter.wald@lw.com  
Ernst & Young, LLP\*



**IN RE: LEHMAN BROTHERS HOLDINGS, INC.,  
SECURITIES & EMPLOYEE RETIREMENT INCOME  
SECURITY ACT (ERISA) LITIGATION**

MDL No. 2017

**INVOLVED CLERKS LIST**

Christopher R. Johnson, Clerk  
U.S. District Court  
P.O. Box 1547  
Fort Smith, AR 72902-1547  
**ARWddb\_MDLclerk/ARWD/08/USCOURTS**

James W. McCormack, Clerk  
402 U.S. Courthouse  
600 West Capitol Avenue  
Little Rock, AR 72201-3325  
**AREddb\_prempro\_mdclerk/ARED/08/USCOURTS**

Richard W. Wieking, Clerk  
Phillip Burton U.S. Courthouse  
Box 36060  
450 Golden Gate Avenue  
San Francisco, CA 94102-3489  
**Rufino Santos/CAND/09/USCOURTS**

Robert C. Heinemann, Clerk  
Long Island Federal Courthouse  
100 Federal Plaza  
Central Islip, NY 11722-4438  
**NYEDml\_MDL\_Contacts**

UNITED STATES DISTRICT COURT  
Southern District of New York  
Office of the Clerk  
500 Pearl Street  
New York, N.Y. 10007  
(212)805-0136

**RECEIVED**

MAR 11 2009

J. Michael McMahon  
Clerk

USDC ND OF CALIFORNIA

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
Date: 2/10/09

In Re: LEHMAN BROTHERS

MDL 2017

Your Docket #

S.D. OF N.Y.

3:08-5353

09-1239

Dear Sir:

Enclosed is a certified copy of the order of the Judicial Panel on Multidistrict Litigation, transferring the above entitled action presently pending in your court, to the Southern District of New York and assigned to Judge KAPLAN for coordinated or consolidated pretrial processing pursuant to 28 USC 1407.

Please return the copy of this letter when transmitting a CERTIFIED COPY OF THE DOCKET SHEET. We will retrieve the documents using our Pacer system. Please note we DO NOT utilize the CM/ECF transfer function.

Sincerely,  
J. Michael McMahon

By:  
MDL Unit  
(212) 805-0646