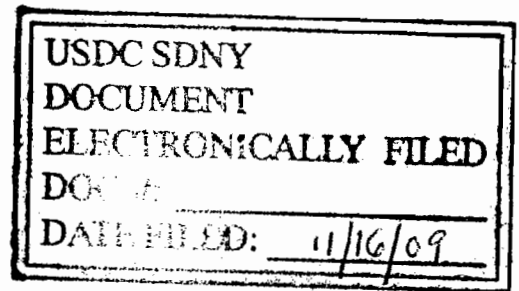


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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In re J. EZRA MERKIN AND GABRIEL
CAPITAL LITIGATION

08 Civ. 10922 (DAB)

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DEBORAH A. BATTS, United States District Judge.

The Court is in receipt of Plaintiff's firm Wolf Haldenstein's letters of July 29, 2009, August 7, 2009, and August 18, 2009; Plaintiff's firm Abby Spanier's letter of October 30, 2009; and Defense Counsel Dechert LLP's letters of August 5, 2009 and August 12, 2009. The plaintiffs' firms propose one set of Lead Plaintiffs and Lead Counsel for the Ascot and Gabriel Fund investors, and a different set of Lead Plaintiffs and themselves as Lead Counsel for the Ariel Fund investors.

As Dechert LLP, who represents Defendant Merkin, points out, the Ariel and Gabriel Funds were invested in parallel, "typically identical" investments, and have both had the same receiver appointed. If any fund is different, it would be the Ascot Fund, which was wholly invested with Bernard L. Madoff. Wolf Haldenstein nevertheless argues that separate Lead Plaintiffs and Lead Counsel are required for the Ariel fund because, variously, there is a choice of law issue presented by Ariel's place of incorporation in the Cayman Islands, Gabriel was marketed to different investors than the Ariel Fund, the fact that there are

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monies available to Ariel investors in light of the fact that Defendant Merkin invested in Ariel, and the fact that Ascot and Gabriel investors do not have standing to sue on behalf of Ariel investors. The Court is not persuaded by any of these arguments, and remains concerned that appointing separate firms will only result in a wasteful duplication of efforts and resources.

All interested parties shall submit an additional letter within one week of the date of this ORDER, citing additional cases that would require or not require appointment of Lead Plaintiff and Lead Counsel for the Ariel Plaintiffs only.

SO ORDERED.

Dated: New York, New York

Nov 16, 2009

Deborah A. Batts

Deborah A. Batts
United States District