

In re Lehman Brothers Equity/Debt Securities Litigation

COURT: United States District Court for the Southern District of New York
CASE NUMBER: 08-cv-5523, 09-md-2017 (LAK)
CLASS PERIOD: 06/12/2007 - 09/15/2008
CASE LEADERS: Max W. Berger

SETTLEMENTS:

1) Lead Plaintiffs Achieve Settlements of \$516 Million with Officer and Director Defendants and with Underwriter Defendants

On December 2, 2011, Lead Plaintiffs submitted to the Court agreements to settle certain claims asserted in the Action.

First, Lead Plaintiffs submitted a proposed settlement to resolve the claims against the individual officer and director defendants (the "D&O Defendants") for \$90,000,000 in cash (the "D&O settlement").

Second, Lead Plaintiffs submitted a proposed settlement to resolve claims against certain alleged underwriters of certain Lehman offerings (the "Settling Underwriter Defendants") for \$426,218,000 in cash (the "Underwriter Settlement").

The combined recovery of \$516,218,000 from these proposed settlements was, at that time, the third largest recovery in a case arising from the financial crisis. The settlements do not resolve claims against any other defendants in the Action.

On April 25 and May 24, 2012, the Court approved the Underwriter Settlement and D&O Settlement as fair, reasonable and adequate to the Settlement Classes.

The Claims administration has now concluded. In August 2013, an initial distribution of the net proceeds of these settlements was made to Settlement Class members who submitted valid claim forms that were eligible for payment. A distributions for Eligible Claims-In Process occurred in July 2014. A second distribution occurred in December 2016. A third distribution occurred in July 2021. Subsequent distributions will occur on a rolling basis, provided that net settlement funds are available.

2) Lead Plaintiffs Achieve \$99 million Settlement with Ernst & Young

On October 11, 2013, Lead Plaintiffs notified the Court that defendant Ernst & Young LLP, Lehman's former auditor, had agreed to pay \$99 million to resolve claims against it, which was in addition to the \$516 million recovered by Lead Plaintiffs in the D&O Settlement and the Underwriter Settlement. Following a Settlement Fairness Hearing on April 16, 2014, Judge Kaplan approved the settlement with Ernst & Young (the "E&Y Settlement") as fair, reasonable and adequate to the Settlement Class. The approval of the E&Y Settlement concludes the litigation brought on behalf of the class.

3) Court Approves \$120 million "structured products" Settlement

In December 2013, the Court approved a \$120 million settlement that resolves claims against UBS Financial Services, Inc. brought by class representatives who purchased Lehman-issued "structured products."

CASE DESCRIPTION:

This securities class action arises out of Lehman Brothers Holdings Inc.'s ("Lehman" or the "Company") issuance of various offerings of debt and equity securities pursuant to offering materials that contained untrue statements and omitted material information, which allowed Lehman to raise over \$31 billion through the offerings set forth in the Complaint and accompanying appendices. The offering materials contained untrue statements and omitted materials facts regarding, among other things:

- **Repo 105:** Lehman used undisclosed repurchase and resale ("repo") transactions, known as "Repo 105" and "Repo 108" transactions (together, "Repo 105"), to temporarily remove tens of billions of dollars from its balance sheet at the end of financial reporting periods, usually for a period of seven to ten days. These transactions lacked any economic substance. While Lehman affirmatively represented throughout the Class Period that it used ordinary repo agreements and recorded these repos as short-term financings, i.e., borrowings, Lehman failed to disclose that (i) it simultaneously engaged in Repo 105 transactions for tens of billions of dollars in assets; (ii) it was recording the Repo 105 transactions as if the underlying assets had been permanently sold and removed from the books; and (iii) it had an obligation to repurchase these assets just days after the end of each quarter. This undisclosed practice had the effect of artificially and temporarily reducing Lehman's net leverage ratio each quarter during the Class Period - an important metric to securities analysts, credit agencies and investors - rendering Lehman's statements concerning net leverage and financial condition materially false and misleading when made and in violation of accounting guidelines.
- **Risk Management:** Lehman publicly and consistently promoted its robust and sophisticated risk management system. In truth, however, Lehman regularly disregarded and exceeded its risk limits, or simply raised the limits, as Lehman accumulated illiquid assets.
- **Concentration of Credit Risk:** Relevant accounting guidelines require disclosure of significant concentrations of credit risk. Lehman, however, failed to disclose material facts concerning its concentration of mortgage and real estate-related assets, preventing investors from meaningfully assessing the Company's exposure to these risky assets.

In short, as Anton Valukas, the court-appointed examiner in Lehman's bankruptcy proceedings, recently testified before the House Committee on Financial Services, "the public did not know there were holes in the reported liquidity pool, nor did it know that Lehman's risk controls were being ignored, or that reported leverage numbers were artificially deflated. Billions of Lehman shares traded on misinformation." Ultimately, the truth about Lehman's financial condition and illiquid assets materialized in a series of announcements and events, concluding with Lehman's bankruptcy filing on September 15, 2008.

On April 23, 2010, Lead Plaintiffs filed a Third Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws ("Complaint"). As defined in the Complaint, the action asserts claims under the Securities Act of 1933 on behalf of all persons and entities, except Defendants and their affiliates, who purchased or otherwise acquired the Lehman securities identified in Appendices A and B to the Complaint and who suffered damages. The Complaint asserts claims against several former Lehman officers (including Richard S. Fuld, Jr., the

former Chief Executive Officer and Chairman of the Board), several members of Lehman's Board of Directors, various underwriters for Lehman debt and equity offerings, and against Ernst & Young LLP, Lehman's auditor. Separately, the Complaint asserts fraud claims under the Securities Exchange Act of 1934 on behalf of all persons and entities, except Defendants and their affiliates, who purchased or otherwise acquired Lehman common stock, call options, or who sold put options between June 12, 2007 and September 15, 2008 and who were damaged as a result. The Complaint asserts these claims against certain Lehman insiders, including Fuld, and against Ernst and Young LLP.

Defendants filed motions to dismiss the Complaint on June 4, 2010, Lead Plaintiffs filed their opposition briefs on June 30, 2010, and Defendants filed their reply briefs on July 13, 2010.

On July 27, 2011, the Court issued a 106-page order upholding the majority of the claims, sustaining what the Court referred to as the "core" allegations in the Complaint. Fact and expert discovery promptly commenced.

Case Documents

- June 5, 2014 - Payment of Eligible Claims-in-Process, Late Adjusted Claims, and Late Submitted Claims
- March 27, 2014 - Joint Stipulation and Order - Change of Hearing Date
- December 18, 2013 - Notice of Proposed Settlement with Defendant Ernst & Young LLP
- June 10, 2013 - Order Approving Distribution Plan
- April 25, 2012 - Order Approving Plan of Allocation for Underwriter Net Settlement Fund
- May 24, 2012 - Memorandum and Order Approving
- April 25, 2012 - Judgment and Order Approving Settlement Between Lead Plaintiffs and the Settling Underwriter Defendants
- March 8, 2012 - Joint Declaration of David Stickney and David Kessler in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements with D&O Defendants and Settling Underwriter Defendants and Approval of Plans of Allocation
- March 8, 2012 - Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- March 8, 2012 - Notice of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- March 8, 2012 - Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlements with D&O Defendants and Settling Underwriter Defendants and Approval of Plans of Allocation
- March 8, 2012 - Notice of Lead Plaintiffs' Motion for Final Approval of Class Action Settlements with D&O Defendants and Settling Underwriter Defendants and Approval of Plans of Allocation
- January 18, 2012 - Checklist Regarding Proof of Claim Form

- January 18, 2012 – Notice of Pendency of Class Action and Proposed Settlement with the Settling Underwriter Defendants (“Underwriter Notice”)
- January 18, 2012 - Notice of Pendency of Class Action and Proposed Settlement with the Director and Officer Defendants (“D&O Notice”)
- April 23, 2010 - Third Amended Class Action Complaint