

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re:

LEHMAN BROTHERS SECURITIES
AND ERISA LITIGATION

09 MD 2017 (LAK)

This Document Applies to: All Cases
----- x

**PRETRIAL ORDER NO. 9
(Motion to Modify Pretrial Order No. 1)**

LEWIS A. KAPLAN, *District Judge.*

Certain plaintiffs move to modify Pretrial Order No. 1 to permit them and their counsel to pursue as class claims certain claims that they have with respect to bonds of Lehman Brothers Holdings, Inc. ("Lehman"), that were issued before February 13, 2007, and to appoint J. Allen Carney to the Executive Committee in this proceeding.


The movants' arguments are singularly unpersuasive. The motion [09 MD 2017 docket item 61] is denied in all respects, substantially for the reasons set forth in the memoranda submitted by Lead Plaintiffs and the individual defendants. I add only two points.

First, movants' assertion that their claims with respect to bond offerings preceding February 13, 2007 "have, in effect, been abandoned" (Movants' mem. 1) would be true if, and only if, movants' counsel is conceding that they have abandoned those claims. As they of course concede no such thing, the assertion is flatly incorrect. Nothing in Pretrial Order No. 1 forecloses prosecution of those claims. While I enjoy good rhetoric as much as the next person, what separates good from bad rhetoric often is a connection between words and reality that makes the words ring true. That connection is missing here.

Second, there is no need at this point to deal with movants' contention that they need not have complied with the Private Securities Litigation Reform Act provisions relating to class actions because their cases were commenced in state courts. There will be sufficient reason to do so in the event they seek class certification with respect to their claims in relation to pre-February 13, 2007 bond offerings.

SO ORDERED.

Dated: April 24, 2009



Lewis A. Kaplan
United States District Judge