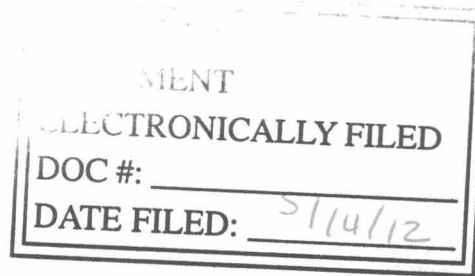


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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In re:

LEHMAN BROTHERS SECURITIES AND
ERISA LITIGATION

This document applies to:

09 MD 2017 (LAK)

*In re Lehman Brothers Equity/Debt Securities
Litigation*, 08 Civ. 5523 (LAK)

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PRETRIAL ORDER NO. 34

LEWIS A. KAPLAN, *District Judge.*


By memorandum and order dated May 3, 2012, the Court directed that certain defendants “file under seal for *in camera* review [in connection with the Court’s determination of whether to accept a proposed class action settlement pending before it] all documents, affidavits, questionnaires and other materials provided to Honorable John S. Martin, Jr. or his associates and accountants in connection with this matter.” Each party submitted voluminous materials to chambers. Each submission was accompanied by a letter which alluded to the extreme sensitivity of the materials, which concern the personal financial circumstances of these defendants, and then stated in one form of words or another that the submissions were made “on the understanding that the material is being received solely for *in camera* consideration by Your Honor [and] that it will not become part of the court file.”

The Court is entirely mindful of the sensitivity of the materials submitted and hereby finds that there is good cause for all of the submissions, save the cover letters, to remain under seal. The May 3, 2012 order, however, was unambiguous – the materials were to be “filed,” which means that they were intended to be part of the record of this case. That is essential because all or some of them could be material to any appeal from the order this Court will enter in due course with respect to approval or disapproval of the settlement. Were they not part of the record, their absence could lead to unnecessary and potentially burdensome proceedings as to what actually was before the district court on the motion to approve the settlement. *See* FED. R. APP. P. 10(e) (any difference as to whether record “truly discloses what occurred in the district court” to be settled by district court; omissions from record to be corrected by preparation of supplemental record). Hence, while counsel permissibly (in light of the May 3 order) did not file these materials on the ECF system, and have not delivered them to the Clerk, the Court accepts the materials submitted to it *in camera* as having been filed with the Court, FED. R. CIV. P. 5(d)(2)(B), and, at the appropriate point, will forward them to the Clerk, where they will remain under seal.

The Court respects counsel's zealous protection of their clients' interests in this regard and, by approving the filing of these materials under seal, reflects its agreement with their underlying concern. But this Court's requirement that the materials be "filed" was unambiguous from the outset and appropriate in the circumstances.

SO ORDERED.

Dated: May 14, 2012



Lewis A. Kaplan
United States District Judge