

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS SECURITIES AND  
ERISA LITIGATION

09 MD 2017 (LAK)

This document applies to:

*Retirement Housing Foundation v. Fuld*, 10 Civ. 6185 (LAK)  
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**PRETRIAL ORDER NO. 67  
(RHF – Motions to Compel)**

LEWIS A. KAPLAN, District Judge.

Plaintiffs move to compel compliance with requests for admission and for production of documents addressed to defendant Richard S. Fuld and to seal certain documents filed in support of those motions.

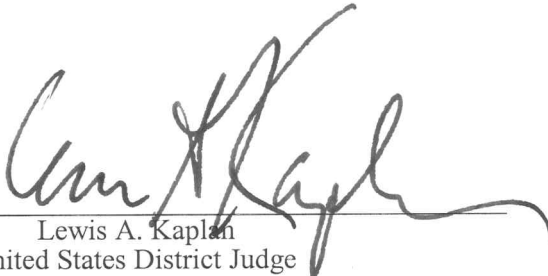
Pretrial Order No. 61 designated the Liaison Counsel in the Individual Actions (of which this is one) to serve as the liaison between the Individual Actions and the Executive Committee for the Class Action for pretrial purposes. ¶ 21i. Liaison Counsel are responsible for, among other things, “coordinat[ing] the taking of any discovery that is unique to the Individual Actions.” ¶ 21ii(e). In the event counsel for a plaintiff in an Individual Action believes that Liaison Counsel has not sufficiently presented his or her views, he or she may take the matter up with the Executive Committee first and, should the issue remain unresolved, the Court. ¶ 21iv. The order goes on to provide that it does not limit the rights of counsel for a plaintiff in any of the Individual Actions to make motions or initiate discovery, among other things, “provided that such actions otherwise comply with . . . [the] coordination provisions herein.”

Plaintiffs in this action do not claim to have attempted to coordinate the discovery that is the subject of these motions with Liaison Counsel or to address the question with the Executive Committee. In such circumstances, neither they nor any other plaintiff in the Individual Actions is free to pursue separate discovery, let alone engage in motion practice about it. Rather than prolong proceedings pertaining to the subjects of these motions, however, the Court has considered them on the merits. The motions to compel are without merit, substantially for the reasons stated in defendant Fuld’s opposition. In addition, given the enormous amount of discovery and other factual information available to the plaintiffs in this case, the motions should be denied in light of the Court’s determination that the criteria set out in Fed. R. Civ. P. 26(b)(2)(C) have been satisfied.

Accordingly, plaintiffs’ motions to compel [DI 1200, DI 1201] are denied. The motion to seal [DI 1203] is not opposed and is granted.

SO ORDERED.

Dated: May 16, 2013

  
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Lewis A. Kaplan  
United States District Judge