



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:

In re Lehman Brothers ERISA Litig. No. 08 Civ. 5598 (LAK)
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PRETRIAL ORDER NO. 17

LEWIS A. KAPLAN, *District Judge.*

On February 2, 2010, the Court granted defendants' motion to dismiss the consolidated amended complaint ("CAC") on the grounds that (a) the Director Defendants were not plan fiduciaries, and (b) the CAC failed to allege any breach of duty by the one other defendant, Ms. Uvino. *See generally In re Lehman Brothers Sec. & ERISA Litig. ("Lehman ERISA")*, 683 F.Supp.2d 294 (S.D.N.Y. 2010). Familiarity with that decision is assumed. Judgment was entered on February 2, 2010 and amended on February 5, 2010.

On March 3, 2010, plaintiffs moved to alter or amend the judgment to provide that dismissal was without prejudice and for leave to amend the CAC. Defendants oppose the motion, arguing that it fails to satisfy the requirements of Rule 59(e) and that, in any event, amendment would be futile because the Proposed Second Consolidated Amended Complaint ("PSCAC") failed to state a claim upon which relief could be granted. In all the circumstances, plaintiffs should be permitted to amend their complaint, and defendants' objections to the PSCAC are more appropriately considered on a motion to dismiss.

Accordingly, plaintiffs' motion to alter or amend the judgment and for leave to amend the CAC [09 MD 2017, docket item 237; 08 Civ. 5598, docket item 126] is granted. Plaintiffs may file an amended complaint on or before September 22, 2010.

SO ORDERED.

Dated: September 8, 2010

Lewis A. Kaplan
United States District Judge