

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.)
SECURITIES & ERISA LITIGATION) No. 2:08-md-1919 MJP

IN RE WASHINGTON MUTUAL, INC.)
SECURITIES LITIGATION) Lead Case No. C08-387 MJP

This Document Relates to: ALL CASES)
PLC-30, PLC-31

)
) NOTE ON MOTION CALENDAR
) (Settlement Hearing Date):
) February 5, 2016 at 9:00 a.m.

**REPLY BRIEF IN FURTHER SUPPORT OF
CLASS REPRESENTATIVE’S MOTION FOR FINAL APPROVAL OF LEHMAN
SETTLEMENT AND LEAD COUNSEL’S MOTION FOR AN AWARD OF
ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

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1 Class Representative Brockton Contributory Retirement System (“Brockton”) and Lead
2 Counsel respectfully submit this reply brief in further support of Class Representative’s Motion
3 for Approval of Final Approval of Lehman Settlement (ECF No. 939) and Lead Counsel’s Motion
4 for an Award of Attorneys’ Fees and Litigation Expenses (ECF No. 940).¹ Brockton seeks final
5 approval of a proposed Settlement with the bankruptcy estate of Lehman Brothers Inc. that will
6 provide the Class with a \$16.5 million Allowed Class Claim in Lehman’s SIPA Proceeding. The
7 Settlement will result in a recovery for the Class of \$5.775 million promptly after its approval, plus
8 an estimated additional amount of potentially \$2.475 million, for an estimated total recovery of
9 approximately \$8.25 million, from a defendant that was initially not expected to be able to
10 contribute at all to the recovery for investors in this Action. If approved, the Settlement, in addition
11 to the \$208.5 million in settlements previously achieved, will bring the aggregate total recovery
12 achieved for the Class to approximately \$216.75 million. Lead Counsel’s motion for fees and
13 expenses requests attorneys’ fees in the amount of \$163,000, which is the equivalent of 2% of the
14 estimated value of the Lehman Settlement, and reimbursement of \$182,896.50 in litigation
15 expenses. Brockton and Lead Counsel respectfully submit that their opening papers in support of
16 their respective motions demonstrate why approval of each motion is warranted. Now that the
17 time for objecting has passed, the reaction of the Class powerfully supports that conclusion. The

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19 ¹ All capitalized terms not otherwise defined herein have the meaning set forth in the Stipulation
20 and Order Regarding Proofs of Claim of Brockton Contributory Retirement System, *et al.* (No.
21 5765, as Amended by No. 6802, and 5762) and Limited Related Stay Relief (ECF No. 928-1); the
22 Declaration of Hannah Ross in Support of Class Representative’s Motion for Final Approval of
Settlement of Class Claim Filed in the SIPA Liquidation of Lehman Brothers Inc. and Lead
Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses (ECF No. 941) (the
“Ross Declaration”); or the Stipulation of Settlement with the Underwriter Defendants dated June
30, 2011 (ECF No. 874-2). All docket citations (ECF No. __) refer to entries in the master MDL
docket, No. 2:08-md-1919 MJP.

1 deadline for filing objections to the motions was January 15, 2016, and no objections have been
2 filed or received.

3 Pursuant to the Court's June 22, 2015 Order Preliminarily Approving Proposed Settlement
4 of Class Claim Filed in the SIPA Liquidation of Lehman Brothers Inc. (ECF No. 929) (the
5 "Preliminary Approval Order"), on July 6, 2015, the Claims Administrator mailed copies of the
6 Court-approved Summary Notice of Proposed Settlement of Class Claim Filed in the SIPA
7 Liquidation of Lehman Brothers Inc. (the "Summary Notice") to all Class Members who
8 (a) received a distribution from the earlier settlement with the Underwriter Defendants in this
9 Action and cashed their distribution check; or (b) were claimants with a Claim-in-Process or
10 Disputed Claim that would be eligible for payment from the Underwriter Settlement if their claim
11 was approved. *See* Declaration of Stephen J. Cirami Regarding Mailing and Publication of Notice
12 (ECF No. 941-1), at ¶ 3. The Summary Notice contained, among other things, a summary
13 description of the proposed Lehman Settlement, the reasons the Settlement is being recommended,
14 information on how to obtain more information (including a copy of the longer Notice), Lead
15 Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 7.5% of the
16 proceeds of the Settlement and for reimbursement of litigation expenses in an amount not to exceed
17 \$225,000, and information on how to object to the Settlement or the motion for fees and expenses.
18 *See id.* at Ex. A. In addition, GCG caused the Summary Notice to be published over the *PR*
19 *NewsWire* on July 6, 2015, and copies of the more detailed Notice were made available on
20 www.WashingtonMutualSecuritiesLitigationSettlement.com and on Lead Counsel's website,
21 www.blbglaw.com, on that date. *See id.* at ¶¶ 4-5; Ross Declaration at ¶¶ 45-46.

22 On December 31, 2015, pursuant to the Court's Preliminary Approval Order, Brockton
23 filed its motion for final approval of the Settlement and Lead Counsel filed its motion for an award

1 of attorneys' fees and reimbursement of expenses in connection with the Lehman Settlement. The
 2 initial motion papers, including the Ross Declaration, explained in detail why the Lehman
 3 Settlement and the motion for fees and expenses should be approved. Lead Counsel's motion for
 4 fees and expenses requests attorneys' fees in the amount of \$163,000, based on the lodestar of
 5 Plaintiffs' Counsel at Seattle-based rates, which is equivalent to 2% of the estimated expected
 6 value of the Lehman Settlement (\$8.25 million) and 2.8% of the \$5.775 million that will be
 7 available for payment to the Class shortly after the Effective Date of the Settlement, and, thus, is
 8 substantially lower than the maximum fee request set out in the Summary Notice and Notice. The
 9 motion also seeks \$182,896.50 in litigation expenses incurred in obtaining the Lehman Settlement,
 10 principally related to the retention of Bankruptcy Counsel, Lowenstein Sandler, LLP, which is
 11 lower than the \$225,000 in expenses that Class Members were informed could be sought.

12 As provided for in the Preliminary Approval Order, the deadline for any objections to the
 13 motion for approval of the Settlement or the motion for fees and expenses was January 15, 2016.
 14 That deadline has passed and no objections to the Settlement or the motion for attorneys' fees and
 15 expenses have been received.

16 The lack of any objections strongly supports approval of the Settlement. *See Roberti v.*
 17 *OSI Sys., Inc.*, No. CV-13-09174 MWF (MRW), 2015 WL 8329916, at *5 (C.D. Cal. Dec. 8, 2015)
 18 ("the lack of objection favors final approval"); *Flores v. Alameda Cty. Indus. Inc.*, No. 14-CV-
 19 03011-JD, 2015 WL 7180607, at *3 (N.D. Cal. Nov. 16, 2015) ("no class members have objected
 20 to the proposed settlement, which is a significant factor in favor of final approval"); *Patel v.*
 21 *Axesstel, Inc.*, No. 3:14-CV-1037-CAB-BGS, 2015 WL 6458073, at *6 (S.D. Cal. Oct. 23, 2015)
 22 ("The absence of a single objection to the settlement 'is compelling evidence that the Proposed
 23 Settlement is fair, just, reasonable, and adequate.'").

1 Similarly, with respect to Lead Counsel’s motion for an award of attorneys’ fees and
2 reimbursement of litigation expenses, the absence of objections supports approval of that motion.
3 *See Vanwagoner v. Siemens Indus., Inc.*, No. 2:13-CV-01303-KJM-EFB, 2014 WL 7273642, at
4 *11 (E.D. Cal. Dec. 17, 2014) (“the absence of objections from the class further demonstrates the
5 reasonableness and fairness of the attorney’s fee request”); *Bendixen v. Sprint Commc'ns Co. L.P.*,
6 No. 3:11-CV-05274-RBL, 2013 WL 2949569, at *4 (W.D. Wash. June 14, 2013) (“The absence
7 of objections by class members to Settlement Class Counsel’s fee-and-expense request further
8 supports finding it reasonable.”).

9 For the foregoing reasons, and the reasons set forth in Brockton’s and Lead Counsel’s
10 opening papers, Brockton and Lead Counsel respectfully request that the Court approve the
11 proposed Lehman Settlement and the motion for attorneys’ fees and reimbursement of expenses.

12 Dated: January 29, 2016

Respectfully submitted,

13 BERNSTEIN LITOWITZ BERGER &
14 GROSSMANN LLP

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses on the Court’s Electronic Mail Notice list.

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