

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re THE RESERVE FUND SECURITIES AND
DERIVATIVE LITIGATION

WILLIAM ROSS and DAWN ROSS,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

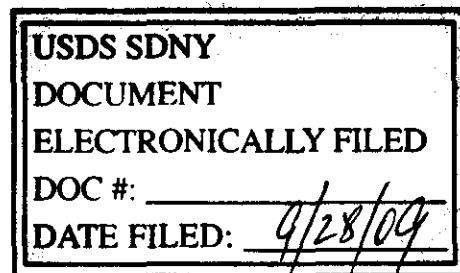
RESERVE MANAGEMENT COMPANY, INC.,
et al.,

Defendants.

09 MD. 2011 (PGG)

ORDER

08 Civ. 10261 (PGG)



PAUL G. GARDEPHE, U.S.D.J.:

This action arises from the Reserve Yield Plus Fund’s holdings in debt securities of Lehman Bros. Holdings, Inc. and the subsequent drop in the net asset value of Fund shares below \$1.00 after Lehman filed a bankruptcy petition on September 15, 2008.

James Passilla and the Reserve Yield Plus Fund Investor Group (“Investor Group”) have filed competing motions for appointment as lead plaintiff and for approval of their counsel as lead counsel. On August 5, 2009, this Court heard oral argument on these motions. Based on Passilla’s arguments at the hearing, the Court authorized limited discovery concerning the formation and make-up of the Investor Group and the Group’s relationship with its counsel. Based on the parties’ original submissions, the August 5 oral argument, and the parties’ supplemental submissions dated August 28, 2009, this Court will now designate the Investor Group to serve as lead plaintiff and its counsel, Hagens Berman Sobol Shapiro LLP (“Hagens Berman”), to serve as lead counsel.

I. SELECTION OF LEAD PLAINTIFF

The Private Securities Litigation Reform Act (“PSLRA”) directs the Court to “appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members.” 15 U.S.C. § 77z-1(a)(3)(B). Under the PSLRA, there is a rebuttable presumption that the movant which “has the largest financial interest in the relief sought by the class” is the “most adequate plaintiff.” *Id.* This presumption may be rebutted “only upon proof by a member of the purported plaintiff class” that the presumptive lead plaintiff “will not fairly and adequately protect the interests of the class” or “is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

The PSLRA does not specify a method for calculating which plaintiff has the “largest financial interest.” Many courts in this District, however, have determined a prospective lead plaintiff’s financial interest by looking to “(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered.” *In re Fuwei Films Securities Litigation*, 247 F.R.D. 432, 436-37 (S.D.N.Y. 2008); *In re Orion Securities Litigation*, No. 08 Civ. 1328 (RJS), 2008 U.S. Dist. LEXIS 55368, 2008 WL 2811358, at *4 (S.D.N.Y. July 8, 2008); *Andrada v. Atherogenics, Inc.*, No. 05 Civ. 061 (RJH), 2005 U.S. Dist. LEXIS 6777, 2005 WL 912359, at *3 (S.D.N.Y. April 19, 2005). This Court, like many other courts, will “place the most emphasis on the last of the four factors: the approximate loss suffered by the movant.” *In re Orion*, 2008 U.S. Dist. LEXIS 55368, 2008 WL 2811358, at *5 (quoting *Kaplan v. Gelfond*, 240 F.R.D. 88, 93 (S.D.N.Y. 2007)).

The chart set forth below¹ makes clear that the financial interest of the Investor Group in the Fund dwarfs the interest held by Passilla:

Movant	Shares Purchased During the Class Period	Shares Sold During the Class Period	Shares Retained on Sept. 16, 2008²	Passilla's Suggested Measure of Losses
David Clouse	9,643,233.00	1,300,000.00	10,343,233.00	\$310,297.31
Thomas Johnston	1,864,159.00	1,127,175.00	736,984.00	\$22,109.50
David Krug	300,000.00	0.00	400,000.00	\$12,000.00
E. H. Levering	0.00	0.00	300,000.00	\$9,000.00
Mark Chipman	104,187.00	6.36	104,180.64	\$3,125.05 ³
Wayne Lehman	100,000.00	0.00	100,000.00	\$3,000.00
RYPI Total	12,011,579.00	2,427,181.36	11,984,397.64	\$359,531.86
James Passilla	1,473,329.00	959,000.00	514,329.00	\$15,429.87

The Investor Group as a whole held substantially more shares through the class period than did Passilla, and thus faced greater losses. Indeed, two members of the Investor Group – David Clouse and Thomas Johnston – individually held substantially more shares through this period than did Passilla. Passilla argues, however, that the appropriate measures of loss are the number of shares purchased during the class period and the losses sustained at the

¹ The numbers in this chart are set forth in the parties' respective declarations. See Kathrein Jan. 26 Decl., Ex. B); Rosenfeld Jan. 26 Decl., Ex. B)

² Several members of the Investor Group held shares in the Reserve Yield Plus Fund prior to the class period. (Kathrein Jan. 26 Decl. Ex. B) These holdings are reflected here.

³ Chipman sold 12.22 shares after the class period ended for \$1.00 per share. (Kathrein Jan. 26 Decl. Ex. B) His estimated loss calculation includes this sale, even though it occurred after the class period ended.

end of the class period.⁴ (Passilla Jan. 26 Br. 5; Rosenfeld Jan. 26 Decl. Ex. B) By these measures, the Investor Group as a whole purchased 12,011,579 shares during the class period and sustained \$359,531.86 in losses. See (Kathrein Jan. 26 Decl. Ex. B) The two largest individual investors – Clouse and Johnston – purchased 9,643,233 and 1,864,159 shares during the class period and sustained \$310,297.31 and \$22,109.50 in losses respectively. See (Kathrein Jan. 26 Decl. Ex. B) Passilla purchased 1,473,329 shares in the same period and sustained \$15,429.87 in losses. (Rosenfeld Jan. 26 Decl. Ex. B) In sum, even by the measures Passilla suggests, he has a smaller financial interest than the Investor Group. He purchased fewer shares during the class period than the Investor Group as a whole; he purchased and retained fewer shares than two of the Investor Group’s individual members standing alone; and his losses were less than two of the Investor Group’s individual members standing alone. Accordingly, there is no question that the Investor Group has the largest financial interest of the lead plaintiff movants and benefits from a rebuttable presumption that it is the most adequate plaintiff. See 15 U.S.C. § 77z-1(a)(3)(B).

The plain language of the PSLRA contemplates that a group may serve as lead plaintiff. Barnet v. Elan Corp., PLC., 236 F.R.D. 158, 162 (S.D.N.Y. 2005) (citing Mitchell v. Complete Management, Inc., No. 99 Civ. 1454 (DAB), 1999 U.S. Dist. LEXIS 14460, 1999 WL 728678, at *3 (S.D.N.Y. Sept. 17, 1999)). In order to be appointed lead plaintiff, a proposed group must show that its unrelated members “will be able to function cohesively and to effectively manage the litigation apart from their lawyers.” Varghese v. China Shenghuo Pharmaceutical Holdings, Inc., 589 F. Supp. 2d 388, 392 (S.D.N.Y. 2008). Courts in this district have considered a variety of factors in making this determination, including the existence of a

⁴ To calculate monetary losses, Passilla adopts an average share price of \$0.97 for shares held at the end of the class period and adds that figure to losses sustained during class period trading. See (Rosenfeld Jan. 26 Decl. Ex. B)

pre-litigation relationship between group members; involvement of the group members in the litigation thus far; plans for cooperation; the sophistication of group members; and whether the group was formed in bad faith – i.e., was created by lawyers for purposes of the litigation. Varghese, 589 F. Supp. 2d at 392; see also Barnet, 236 F.R.D. at 162. The size of the group and, in particular, whether it is too large to function cohesively, is also a factor. Freudenberg v. E*Trade Financial Corp., No. 07 Civ. 8538 (RWS), 2008 U.S. Dist. LEXIS 62767, 2008 WL 2876373, at *11 (S.D.N.Y. July 17, 2008) (“a group consisting of persons that have no pre-litigation relationship may be acceptable as a lead plaintiff candidate so long as the group is relatively small and therefore presumptively cohesive”); Barnet, 236 F.R.D. at 162.

Analysis of the factors identified in Varghese, Barnet, and Freudenberg indicates that the Investor Group is well equipped to serve as lead plaintiff. With respect to size, the Investor Group consists of six members (Kathrein Jan. 26 Decl. Ex. D), a number small enough to function cohesively. See Barnet, 236 F.R.D. at 162 (finding that “six members is not too unwieldy a number to effectively manage the litigation”). The members of the Investor Group are also sophisticated parties capable of directing this litigation. Mark Chipman and David Krug have been active investors for more than two decades. (Interrogatory Responses of Mark Chipman No. 22; Interrogatory Responses of David Krug No. 22) E.H. Levering is the CFO of a college and foundation, while Wayne Lehman manages the U.S. subsidiary of a Belgian company. (Interrogatory Responses of E.H. Levering No. 22; Interrogatory Responses of Mark Chipman No. 22) Thomas Johnston was employed by Wachovia Securities and has held Series 7, 52, and 53 licenses. (Interrogatory Responses of Thomas Johnston No. 22) David Clouse is the former owner of a substantial business that he sold for \$100 million in 2006, and has previously been a plaintiff in a large litigation. (Interrogatory Responses of David Clouse No.

22) The combined experience of the members of the Investor Group is more than sufficient to competently direct this litigation.

Passilla argues, however, that the members of the Investor Group did not have a pre-litigation relationship, that the group was formed in bad faith with the connivance of the members' lawyer, Reed Kathrein, and that the Investor Group will be directed by its lawyers, rather than being actively involved in the management of the litigation. (Passilla Feb. 13 Br. 6-8). A Court may reject a proposed group as lead plaintiff if it "has been assembled as a makeshift by attorneys for the purpose of amassing an aggregation of investors purported to have the greatest financial interest in the action." Varghese, 589 F. Supp. 2d at 392-93. Here, however, the evidence does not indicate that the Investor Group was formed in bad faith.

The genesis of the Investor Group was as follows: three members of the Investor Group – Mark Chipman, David Clouse, and E.H. Levering – were followers of the RYPQX Yahoo message board. (Interrogatory Responses of Mark Chipman No. 5; Interrogatory Responses of David Clouse No. 5; Interrogatory Responses of E.H. Levering No. 5) This private message board was devoted to discussion of the Reserve Yield Plus Fund in light of its collapse following the Lehman bankruptcy. See Interrogatory Responses of David Clouse No. 5; Interrogatory Response of E.H. Levering No. 2. A subset of the investors who participated in this message board formed a "core group" to discuss the Fund's suspension of redemptions and potential steps that might be taken in response. (Interrogatory Response of E.H. Levering No. 2) The "core group" eventually included three members of the Investor Group: Chipman, Clouse, and Levering. (Interrogatory Response of E.H. Levering No. 2) In October and November of 2008, members of the "core group" held conference calls with several attorneys and attempted to contact at least one additional law firm. (Interrogatory Response of E.H. Levering No. 2)

During this time, one member of the “core group” contacted Reed Kathrein and arranged a conference call between Kathrein and the “core group.” (Interrogatory Response of E.H. Levering No. 2) Between the filing of the instant lawsuit in late November and January, 2009, members of the “core group” sought an attorney who might represent them in a potential class action; with this goal in mind, they were in repeated contact with Kathrein. (Interrogatory Response of E.H. Levering No. 2)

Three additional members of the Investor Group – Thomas Johnston, David Krug, and Wayne Lehman – were introduced to the “core group” by Kathrein. (Interrogatory Responses of Thomas Johnston No. 19; Interrogatory Response of David Krug No. 6; Interrogatory Response of Wayne Lehman No. 20) All three sought out Kathrein based on either a press release issued by his firm – Hagens Berman – or the results of Internet searches.⁵ (Interrogatory Responses of Thomas Johnston No. 3; Interrogatory Response of David Krug No. 3; Interrogatory Response of Wayne Lehman No. 3)

⁵ Passilla contends that Krug and Lehman learned of Kathrein as a result of misleading press releases issued by Kathrein and his law firm in late November and early December 2008. (Passilla Aug. 28 Letter at 5) Passilla claims that the language of the press release, which encouraged those who invested in the Reserve Yield Plus Fund through TD Ameritrade to contact “plaintiff’s counsel Reed Kathrein,” was misleading insofar as it indicated that Kathrein was already representing a plaintiff in the filed action. (Passilla Aug. 28 Letter 5) Lehman does not recall ever seeing a press release from Kathrein or his firm, however (Interrogatory Response of Wayne Lehman No. 3), and both Lehman and Krug have made clear that they understood that Kathrein and his firm did not file the initial complaint in this case. (Interrogatory Responses of David Krug No. 10; Interrogatory Response of Wayne Lehman No. 10)

Passilla relies solely on Tsirekidze v. Syntax-Brilliant Corp., No. cv-07-22-04, 2008 WL 942272 (D. Ariz. Apr. 7, 2008) in arguing that Kathrein’s allegedly misleading press release justifies disqualifying the Investor Group from serving as lead plaintiff. (Passilla Aug. 28 Letter 5) In Tsirekidze, however, all the members of the group conceded that their retention of counsel was the result of the misleading release. Tsirekidze, 2008 WL 942272, at *4. In this case, even if Kathrein’s press release can be read as Passilla suggests, Lehman and Krug were not misled.

Although Kathrein introduced these three eventual Investor Group members to the “core group,” they then became part of a larger discussion among the members of the “core group” about whether to seek lead plaintiff status and whether to retain Kathrein.⁶ (Interrogatory Responses of Thomas Johnston No. 20, 21; Interrogatory Responses of David Krug No. 20, 21; Interrogatory Responses of Wayne Lehman No. 20, 21) It is clear from the interrogatory answers and the joint declaration submitted by Investor Group members that this process was not merely a formality but instead involved substantive discussions in preparation for litigation.

All six members of the Investor Group were involved in the negotiations with Kathrein as to whether he would represent the group in seeking to be named Lead Plaintiff.⁷ (Interrogatory Responses of Mark Chipman No. 21; Interrogatory Responses of David Clouse No. 21; Interrogatory Responses of Thomas Johnston No. 21; Interrogatory Responses of David Krug No. 21; Interrogatory Responses of E.H. Levering No. 21; Interrogatory Responses of Wayne Lehman No. 21) These negotiations involved the members meeting separately from their future attorney, setting a fee cap, and then engaging in a discussion with Kathrein. (Interrogatory Responses of Mark Chipman No. 21; Interrogatory Responses of David Clouse No. 21;

⁶ All Investor Group members were aware of the efforts of some “core group” members, including Levering, to interview a number of lawyers who might represent them in an action against the Reserve Yield Plus Fund. (Interrogatory Responses of Mark Chipman No. 11, 12; Interrogatory Responses of David Clouse No. 11, 12; Interrogatory Responses of Thomas Johnston No. 11, 12; Interrogatory Responses of David Krug No. 11, 12; Interrogatory Responses of E.H. Levering No. 11, 12; Interrogatory Responses of Wayne Lehman No. 11, 12) These members also made an effort to approach Passilla’s counsel – Coughlin Stoia Geller Rudman Robbins LLP – about possible representation, but abandoned that effort when the firm “expressed little interest” in talking with them. (Interrogatory Responses of David Clouse No. 11)

⁷ Passilla notes that Johnston, Krug, and Lehman had retained Kathrein to represent them individually prior to the Investor Group’s negotiations with Kathrein. (Passilla Aug. 28 Letter at 3) These earlier retention agreements, however, involved only individual representation and were separate and apart from the negotiations to serve as counsel to a group of investors seeking Lead Plaintiff status. See (Interrogatory Responses of Thomas Johnston No. 20; Interrogatory Responses of David Krug No. 20; Interrogatory Responses of Wayne Lehman No. 20)

Interrogatory Responses of Thomas Johnston No. 21; Interrogatory Responses of David Krug No. 21; Interrogatory Responses of E.H. Levering No. 21; Interrogatory Responses of Wayne Lehman No. 21) These discussions resulted in the final “take it or leave it” offer and in Kathrein accepting the terms of the Investor Group’s offer. (Interrogatory Responses of Mark Chipman No. 21; Interrogatory Responses of David Clouse No. 21; Interrogatory Responses of Thomas Johnston No. 21; Interrogatory Responses of David Krug No. 21; Interrogatory Responses of E.H. Levering No. 21; Interrogatory Responses of Wayne Lehman No. 21) These negotiations demonstrate that the Investor Group is not merely a creation of its lawyer and indicate that the members of the Investor Group will manage the litigation and their counsel.

The Investor Group also agreed on a decision-making structure to address issues that arise during the litigation. (Interrogatory Responses of Mark Chipman No. 21; Interrogatory Responses of David Clouse No. 21; Interrogatory Responses of Thomas Johnston No. 21; Interrogatory Responses of David Krug No. 21; Interrogatory Responses of E.H. Levering No. 21; Interrogatory Responses of Wayne Lehman No. 21) Such collaboration and planning suggests that a group of previously unrelated investors may be suitable to serve as lead plaintiff. Sklar v. Bank of America Corp., No. 09 MDL 2058 (DC), 2009 U.S. Dist. LEXIS 56009, 2009 WL 1875764, at *6-7 (S.D.N.Y. June 30, 2009). Furthermore, the members of the Investor Group have acknowledged their obligation as lead plaintiff to work together to monitor and direct the activities of counsel and to represent the class. See Joint Decl. ¶ 9).

This record is sufficient to demonstrate that the Investor Group is not merely a creation of its lawyer. The PSLRA “contains no requirement mandating that the members of a proper group be ‘related’ in some manner; it requires only that any such group ‘fairly and adequately protect the interests of the class.’” In re Cendant Corp. Litig., 264 F.3d 201, 266-67

(3d Cir. N.J. 2001). Here, while the group's lawyer played a role in introducing three group members to three other members who were already in contact, it is evident that the Investor Group was not formed as part of a litigation-driven effort to assemble a larger financial stake than Passilla. As noted above, two of the members of the Investor Group, standing alone, have a more significant financial interest than Passilla. See Barnet, 236 F.R.D. at 162-63 (finding that a proposed lead plaintiff group was not formed in bad faith where individual members had a more significant financial interest than other lead plaintiff movants).

To qualify to serve as lead plaintiff, the Investor Group must also satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B) At this stage of the litigation, the lead plaintiff movant must satisfy only the typicality and adequacy requirements set forth in Rule 23(a), Kaplan, 240 F.R.D. at 94; In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 50 (S.D.N.Y. 1998), and need only make a preliminary showing that these requirements are met. Varghese, 589 F. Supp. 2d at 397; Freudenberg, 2008 U.S. Dist. LEXIS 62767, 2008 WL 2876373, at *14.

The Investor Group's claims are typical of the class. The typicality requirement "is satisfied when all claims arise from the same course of events, and each class member makes similar legal arguments to prove a defendant's liability." In re Smith Barney Transfer Agent Litig., 05 Civ. 7583 (WHP), 2006 U.S. Dist. LEXIS 19728, 2006 WL 991003, at *3 (S.D.N.Y. April 17, 2006) citing Robinson v. Metro-North Commuter R.R. Co., 267 F.3d 147, 155 (2d Cir. 2001); In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. at 49. The members of the Investor Group, like all members of the class, have alleged claims arising from their investment in the Reserve Yield Plus Fund. These claims all involve reliance on statements by Defendants about the nature and performance of the Yield Plus Fund made before the Fund

“broke the buck” and fell below a \$1.00 NAV on September 16, 2008.⁸ (Investor Group Jan. 26 Br. 7-8)

The Investor Group is also adequate to represent the class. The adequacy requirement is met where (1) class counsel are “qualified, experienced and generally able to conduct the litigation;” (2) the proposed lead plaintiff does not have interests antagonistic to other class members; and (3) the proposed lead plaintiff possesses a significant financial interest in the outcome of the litigation. See Varghese, 589 F. Supp. 2d at 397 (citing Kuriakose v. Fed. Home Loan Mortg. Co., No. 08 Civ. 7281, 2008 U.S. Dist. LEXIS 95506, 2008 WL 4974839, at *4 (S.D.N.Y. Nov. 24, 2008)).

The Investor Group easily meets these requirements. That the Investor Group has retained qualified counsel and possesses a significant financial interest in the litigation is not in question. The Investor Group’s counsel, Hagens Berman, has served as lead counsel in several significant securities class actions. Moreover, the Investor Group’s financial interest is not only significant but dwarfs that of the other movant for lead plaintiff status.

Passilla argues, however, that there is a potential for “core group” members who have not joined the Investor Group to exert undue influence over the litigation, and that this presents a risk of conflicts and subjects the Investor Group to unique defenses that render

⁸ Passilla contends that Levering lacks standing to serve as Lead Plaintiff because he did not purchase or sell shares in the Fund during the class period (Passilla Aug. 28 Letter at 2 n.1), a requirement for asserting claims under § 10(b) of the Securities Exchange Act of 1934. See Blue Chip Stamps et al. v. Manor Drug Stores, 421 U.S. 723 (1975). “[L]ead plaintiffs, appointed pursuant to the PSLRA, need not satisfy all elements of standing with respect to the entire lawsuit,” however, as long as the general requirement that at least one named plaintiff has standing to pursue each claim alleged is met. In re Salomon Analyst Litig., 350 F. Supp. 2d 477, 496 (S.D.N.Y. 2004) (citing In re Global Crossing Sec. Litig., 313 F. Supp. 2d 189, 205 (S.D.N.Y. 2003)). Passilla has challenged Levering’s standing on only one of the many claims alleged, and it appears that each of the other members of the Investor Group has standing to pursue that claim. In any event, standing is an issue more appropriately addressed at the class certification stage. In re Smith Barney Transfer Agent Litig., 2006 WL 991003, at *4.

it incapable of representing the class. (Passilla Aug. 28 Letter at 1-3) There is no evidence, however, that the Investor Group has been or is likely to be unduly or improperly influenced by members of the “core group.” Moreover, the goal of the adequacy inquiry is “to uncover conflicts of interest between named parties and the class they seek to represent.” Amchem Prods. v. Windsor, 521 U.S. 591, 626 (U.S. 1997). Indeed, the adequacy requirement “tends to merge” with the typicality requirement, as both “serve as guideposts for determining whether . . . the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” Amchem Prods., 521 U.S. at 626 (quoting Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 157, n.13 (1982)). Here, the claims of the Investor Group are not only interrelated with the claims of other class members, but are essentially identical to those claims. As a result, the Investor Group is an adequate Lead Plaintiff.

Because the Investor Group satisfies the requirements of the PSLRA, pursuant to Section 27(a)(3)(B) of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(3)(B), and Section 23D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA, it will be appointed as Lead Plaintiff.

II. SELECTION OF LEAD COUNSEL

Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the “most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.” See also Seidel v. Noah Educ. Holdings Ltd., No. 08 Civ. 9203 (RJS), 2009 U.S. Dist. LEXIS 25949, 2009 WL 700782, at *5 (S.D.N.Y. Mar. 9, 2009). Here, Lead Plaintiff Investor Group has selected Hagens Berman Sobol Shapiro LLP as Lead Counsel and Schoengold Sporn Laitman & Lometti, P.C. (“Schoengold Sporn”) as Liaison Counsel.

Because Hagens Berman has served as lead counsel in several significant securities class actions, it is qualified to serve as lead counsel in this matter, and is hereby appointed to serve in that capacity. Schoengold Sporn has likewise represented investors in securities class actions for many years, is qualified to serve as liaison counsel in this matter, and is hereby appointed to serve in that capacity.

Lead Counsel and Liaison Counsel shall be responsible for:

- (1) Signing any future amended complaints, motions, briefs, discovery requests, objections, stipulations, or notices on behalf of plaintiffs for any matters arising during pretrial proceedings;
- (2) Conducting all pretrial proceedings on behalf of plaintiffs;
- (3) Briefing and arguing motions;
- (4) Initiating and conducting discovery;
- (5) Speaking on behalf of plaintiffs at any pretrial conference;
- (6) Employing and consulting with experts;
- (7) Conducting settlement negotiations with defense counsel on behalf of plaintiffs;
- (8) Calling meetings of plaintiffs' counsel;
- (9) Accepting service on behalf of all plaintiffs;
- (10) Distributing to all plaintiffs' counsel copies of all notices, orders, and decisions of this Court, including this order;
- (11) Maintaining an up-to-date list of counsel available to all plaintiffs' counsel on request; and
- (12) Keeping a complete file of all papers and discovery materials filed or generated in this action, which shall be available to all plaintiffs' counsel at reasonable hours.

III. SCHEDULING AND ADMINISTRATION

Plaintiffs and Defendants are directed to confer as to a schedule for any motion to dismiss the complaint. By October 9, 2009, Plaintiffs and Defendants will submit to this Court a joint letter containing their proposed schedule for the filing and service of any such motion.

Discovery in this action is stayed, pursuant to 15 U.S.C. §§ 77z-1(b)(1) and 78u-4(b)(3)(B). The parties are encouraged to meet and confer with each other, however, concerning a proposed schedule for discovery.

In issuing this Order, this Court makes no ruling and expresses no opinion on any class certification issues, and defendants reserve all rights to oppose certification of a putative class.

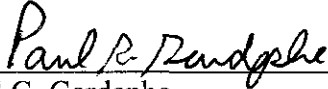
CONCLUSION

For the foregoing reasons, the Reserve Yield Plus Fund Investor Group's motion for appointment as lead plaintiff is GRANTED, and the Investor Group's motion for appointment of Hagens Berman Sobol Shapiro LLP as lead counsel is GRANTED. The motion of James Passilla to serve as lead plaintiff is DENIED, and his motion for appointment of Coughlin Stoia Geller Rudman & Robbins LLP as lead counsel is likewise DENIED.

The Clerk of the Court is directed to terminate the motions (Docket Nos. 16, 19).

Dated: New York, New York
September 28, 2009

SO ORDERED.



Paul G. Gardephe
United States District Judge