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FROM THE COURTS

Lehman Brothers litigation marches on

by Ross Todd
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A little more than a year after securing a combined \$507 million in class settlements with Lehman Brothers officers and underwriters, plaintiffs won class certification in their continuing case against Lehman auditor Ernst & Young. Manhattan U.S. District Judge Lewis Kaplan granted class certification with this nine-page ruling Wednesday and appointed Bernstein Litowitz Berger & Grossmann and Kessler Topaz Meltzer & Check as class counsel.

Kaplan also granted class certification for a separate suit alleging claims against UBS Financial Services, Inc., which sold structured products issued by Lehman. The bank faces claims from investors who maintain that UBS's offering documents for Lehman's "principal protection notes" were false and misleading because they didn't adequately disclose that "principal protection" depended upon Lehman's solvency. Judge Kaplan appointed Girard Gibbs class counsel in the UBS case.

Plaintiffs filed a slew of securities claims against Lehman's directors, officers, underwriters, and auditors shortly after the



VERONICA WEBER

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bank's spectacular collapse in September 2008. While Kaplan dismissed many of the claims against E&Y in July 2011, he did allow claims to go forward that E&Y made a false or mis-

leading statement in Lehman's second quarter report in 2008. The accounting firm allegedly was on notice by June 2008 that Lehman had used the notorious Repo 105 accounting

maneuver to "portray its net leverage more favorably than its financial position warranted," Kaplan then wrote.

In opposing class certification, E&Y's lawyers at Latham

& Watkins had argued that one of the proposed class representatives, Oklahoma Firefighters Pension and Retirement System, didn't rely on Lehman's 10-Q filing because it had delegated its investment decisions to an investment manager that used a trading model that tracked the S&P 500. "This court disagrees," wrote Kaplan. "Tracking an index for an efficient market is sufficient reliance for the purpose of class certification."

Daniel Girard of Girard Gibbs said Thursday that the UBS class includes 50,000 people who invested in roughly \$500 million worth of Lehman offerings. "These are exclusively individual investors," Girard said. "The losses here hit people hard and we are committed to making sure this litigation results in a meaningful recovery."

E&Y's counsel Miles Ruthberg of Latham & Watkins directed our call to a spokesperson for the accounting firm who did not immediately respond. UBS's counsel, Marshall King at Gibson, Dunn & Crutcher, forwarded our request for comment to UBS, which declined to comment.

Ross Todd reports for The American Lawyer, an ALM affiliate of the Daily Business Review.