

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-2665 Caption [use short title]

Motion for: Leave to File Brief of Amicus Curiae In re Barclays Bank PLC Securities Litigation

Set forth below precise, complete statement of relief sought:
Leave to file an amicus curiae brief in support of
the Defendants-Appellees seeking affirmance

MOVING PARTY: Chamber of Commerce of the U.S. OPPOSING PARTY: Marshall Freidus, et al.
Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Richard D. Bernstein OPPOSING ATTORNEY: Mark Solomon
Willkie Farr & Gallagher LLP Robbins Geller Rudman & Dowd LLP
1875 K Street, N.W. 655 West Broadway, Suite 1900
Washington, D.C. 20006 San Diego, CA 92101
(202) 303-1000; rbernstein@willkie.com (619) 231-7423; marks@rgrdlaw.com

Court-Judge/Agency appealed from: U.S. District Court, Southern District of New York, Hon. Paul A. Crotty

Please check appropriate boxes:
FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has movant notified opposing counsel (required by Local Rule 27.1):
Has request for relief been made below?
Has this relief been previously sought in this Court?
Requested return date and explanation of emergency:

Is oral argument on motion requested?
Has argument date of appeal been set?

Signature of Moving Attorney: /s/ Richard D. Bernstein Date: 12/23/2011 Has service been effected? Yes No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

11-2665-cv

(Docket Number in District Court: 1:09-cv-01989-PAC)

IN THE
**United States Court of Appeals
for the Second Circuit**

MARSHALL FREIDUS, on behalf of himself and all others similarly situated,
STEWART THOMPSON and SHARON THOMPSON, Trustees for the S.O. Thompson
Rev. Trust and the S.G. Thompson Rev. Trust, DORA L. MAHBOUBI,

Lead Plaintiffs-Appellants,

(caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**MOTION OF THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA
FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE IN SUPPORT OF THE
DEFENDANTS-APPELLEES SEEKING AFFIRMANCE**

Robin S. Conrad
Rachel L. Brand
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

Richard D. Bernstein
Counsel of Record
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000

Mei Lin Kwan-Gett
Zheyao Li
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

*Counsel for Amicus Curiae
The Chamber of Commerce of the United States of America*

LARRY MORRISON, Individually and on behalf of all others similarly situated,
JEFFREY LEFCOURT, on behalf of himself and all others similarly situated, BEVERLY
PELLEGRINI, on behalf of herself and all others similarly situated, ALFRED FAIT, on
behalf of himself and all others similarly situated,

Consolidated Plaintiffs,

—v.—

BARCLAYS BANK PLC, BARCLAYS PLC, MATTHEW WILLIAM BARRETT, JOHN
SILVERSTER VARLEY, NAGUIB KHERAJ, ROBERT EDWARD DIAMOND, JR., SIR
RICHARD BROADBENT, RICHARD LEIGH CLIFFORD, DAME SANDRA J.N DAWSON, SIR
ANDREW LIKIERMAN, SIR NIGEL RUDD, STEPHEN GEORGE RUSSELL, JOHN MICHAEL
SUNDERLAND, BARCLAYS CAPITAL SECURITIES LIMITED, CITIGROUP GLOBAL
MARKETS INC., MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED,
WACHOVIA CAPITAL MARKETS, LLC, MORGAN STANLEY & CO. INCORPORATED,
UBS SECURITIES LLC, A.G. EDWARDS & SONS, INC., BNP PARIBAS SECURITIES
CORP., GOLDMAN, SACHS & CO., KEYBANC CAPITAL MARKETS INC, RBC DAIN
RAUSCHER INC., SUNTRUST CAPITAL MARKETS, INC., WELLS FARGO SECURITIES,
LLC, MARCUS AGIUS, DR. CHRISTOPHER LUCAS, GARY A. HOFFMAN, FREDERIK
SEEGERS, DAVID G. BOOTH, FULVIO CONTI, DANIEL CRONJE, BANC OF AMERICA
SECURITIES LLC,

Defendants-Appellees.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is not a publicly traded corporation. It has no parent corporation and no publicly traded corporation owns more than 10% of its stock.

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, the Chamber of Commerce of the United States of America (“Chamber”) respectfully seeks leave to file a brief as *amicus curiae* in support of the Defendants-Appellees, seeking this Court’s affirmance of the decision below.¹ The Chamber’s proposed brief accompanies this motion.

The Chamber seeks leave to file a brief to address one particular issue that has potential implications far beyond this case. Plaintiffs-Appellants (“Plaintiffs”) argue that statements made by Barclays Bank PLC (“Barclays”) that are immaterial or at most statements of opinion gave rise to a duty to disclose all underlying facts that might lead someone to a different opinion or view. This unprecedented argument would routinely impact numerous businesses of many kinds that participate in the United States securities markets.

The Chamber is the Nation’s largest federation of business companies and associations. It directly represents 300,000 members and indirectly represents the interests of over 3 million business, trade, and professional organizations of every size, in every sector, and from every region of the country. Over 96% of the Chamber’s members are small businesses with 100 or fewer employees. An important function of the Chamber is to represent the interests of its members in

¹ The Plaintiffs-Appellants have not consented to the Chamber’s filing of an *amicus* brief supporting affirmance.

matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of general concern to the nation's business community, such as those involving the federal securities laws, including *Pacific Investment Management Co. LLC v. Mayer Brown LLP*, 603 F.3d 144 (2d Cir. 2010), *Gearren v. The McGraw-Hill Companies, Inc.*, 660 F.3d 605 (2d Cir. 2011), *Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S. Ct. 2179 (2011), and *Stoneridge Investment Partners, LLC v. Scientific Atlanta, Inc.*, 552 U.S. 148 (2008).

Many of the Chamber's members are companies subject to the U.S. securities laws who would be directly and adversely affected if the Court were to hold that a statement that is immaterial or at most a statement of opinion gives rise to a duty to disclose all underlying facts that might cause a different person to reach a different opinion or view. While this particular case involves mortgage-related assets, the limitless argument advocated by Plaintiffs would have broad ramifications for every company subject to the Securities Act of 1933 or the Securities Exchange Act of 1934.

The Chamber's proposed brief is "desirable" and "relevant to the disposition of the case," Fed. R. App. P. 29(b)(2), because it "alerts the merits panel to possible implications of the appeal." *Neonatology Assocs. v. Comm'r of Internal Revenue*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.). Plaintiffs propose that

general, subjective statements characterizing an issuer's business that are immaterial or at most opinions create a duty to disclose the size and financial results of particular business lines encompassed within the statements. Such a duty would be unprecedented and, if adopted, would vastly increase the litigation risk faced by numerous issuers in the U.S. securities markets, harming our competitiveness in an already volatile economic climate.

The Chamber's proposed *amicus* brief demonstrates that there is no principled basis to limit Plaintiffs' proposed bootstrap argument to cases involving subprime and other mortgage-related assets. If Plaintiffs' position were accepted, then any company's statement of opinion about its business could be a basis for suit for failing to itemize business lines or other factual details that might lead to a different opinion or view. For example, suppose a company had stated an opinion that its European "business is stable." It could later be sued with 20-20 hindsight for failure to disclose details about the size or financial results of every business line in every country in that region. A furniture company stating its opinion that its "business is stable" would be subject to suit for failure to disclose details of its sales of tables, chairs, beds, and every other component of its business. And so on for countless other industries.

For the reasons set forth herein, the Chamber's motion for leave to file the accompanying proposed *amicus* brief should be granted.

Dated: December 23, 2011

Respectfully submitted,

/s/ Richard D. Bernstein

Robin S. Conrad
Rachel L. Brand
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

Richard D. Bernstein
Counsel of Record
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000

Mei Lin Kwan-Gett
Zheyao Li
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

*Counsel for Amicus Curiae
The Chamber of Commerce
of the United States of America*

7258960

CERTIFICATE OF SERVICE & CM/ECF FILING

11-2665-cv

Freidus v. Barclays Bank PLC

I hereby certify that I caused the foregoing Motion of the Chamber of Commerce of the United States of America for Leave to File a Brief as *Amicus Curiae* in Support of Defendants-Appellees Seeking Affirmance to be served on counsel for Lead Plaintiffs-Appellants and Defendants-Appellees via Electronic Mail generated by the Court's electronic filing system (CM/ECF) with a Notice of Docket Activity pursuant to Local Appellate Rule 25.1:

David H. Braff
Michael T. Tomaino, Jr.
Adam T. Kirgis
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004

Jay B. Kasner
Scott Musoff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
4 Times Square
New York, New York 10036

Attorneys for Defendants-Appellees

Mark Solomon
Andrew J. Brown
Joseph D. Daley
ROBBINS GELLER RUDMAN &
DOWD LLP
655 West Broadway, Suite 1900
San Diego, California 92101

Samuel H. Rudman
David A. Rosenfeld
Mario Alba, Jr.
ROBBINS GELLER RUDMAN &
DOWD LLP
58 South Service Road, Suite 200
Melville, New York 11747

Ramzi Abadou
Eli R. Greenstein
Stacey M. Kaplan
Erik D. Peterson
KESSLER TOPAZ MELTZER &
CHECK, LLP
580 California Street, Suite 1750
San Francisco, California 94104

*Attorneys for Lead Plaintiffs-
Appellants*

I further certify that an electronic copy was uploaded to the Court's electronic filing system.

Dated: December 23, 2011

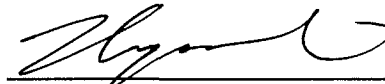
Notary Public:

Sworn to me this

December 23, 2011

John Hagel
Notary Public, State of New York
No. 01HA6251181
Qualified in New York County
Commission Expires November 14, 2015

JOHN WAGNER HAGEL
Notary Public, State of New York
No. 01HA6251181
Qualified in New York County
Commission Expires Nov. 14, 2015



Zheyao Li

Counsel for Amicus Curiae
The Chamber of Commerce of the
United States of America