

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re :

LEHMAN BROTHERS SECURITIES AND :  
ERISA LITIGATION : MASTER DOCKET  
: 09 MD 2017 (LAK) ECF CASE

This Document Applies To: :

*State Compensation Insurance Fund v.* :  
*Fuld et al.*, 11 Civ. 3892 (LAK) :

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**CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE, including the releases incorporated herein (“Settlement Agreement” or “Agreement”), is entered into as of the 18th day of October, 2013, between and among:

- a. State Compensation Insurance Fund, on behalf of its former and current directors, officers, employees, policy holders and any agent, but only in the agents’ capacity as a representative of State Fund (“Plaintiff”); and
- b. Defendants Richard S. Fuld, Jr., Christopher M. O’Meara, and Erin Callan (collectively, “Settling Defendants”).

The Settling Defendants collectively comprise all officer defendants in the Action (as defined below). Plaintiff and Settling Defendants shall collectively be referred to in this Settlement Agreement as the “Settling Parties.” This Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle all claims that were or could have been brought by Plaintiff relating to Plaintiff’s investments in Lehman securities and the subject matter of the Action (as defined below) against the Settling Defendants, as well as the other Releasees, to avoid further litigation.

**I. DEFINITIONS**

- A. As used in this Settlement Agreement, the following capitalized terms have the meanings specified below.
  - 1. “Action” means the civil action currently pending in the District Court captioned *State Compensation Insurance Fund v. Fuld et al.*, Case No. 11 Civ. 03892 (LAK).

2. "Claims" means any and all claims, demands, rights, liabilities, damages, penalties, costs, losses, indemnities, duties, obligations, rights, causes of action, or suits of any nature (including claims for costs, attorneys' fees or expenses), whether known or unknown, concealed or hidden, fixed or contingent, direct or indirect, anticipated or unanticipated, whether actually asserted or that might have been asserted, whether legal, equitable, contractual, statutory, or any other type, under the federal or state securities laws or under any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside of the United States, relating to Plaintiff's investments in Lehman securities and the subject matter of the Action.
3. "District Court" means the United States District Court for the Southern District of New York.
4. "Effective Date" means the date on which the Settlement becomes effective as provided in section II(A)(5) below.
5. "Final" means that with respect to the Bar Order such Order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, the Bar Order becomes "Final" when (i) no appeal has been filed and the time for commencing any appeal has expired; or (ii) an appeal has been filed and either the appeal has been dismissed and the time, if any, for commencing further appeal has expired, or the order has been affirmed in its entirety and the time, if any, for commencing any further appeal has expired. For purposes of this definition, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari, mandamus, or prohibition, and any other proceedings of like kind.
6. "Lehman" means Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc., and any and all of their affiliates and subsidiaries.
7. "Releasees" means, in any capacity:
  - (a) Settling Defendants; and
  - (b) Settling Defendants' past, present, and future attorneys, accountants (except Ernst & Young LLP), agents, insurers, spouses, children, heirs, successors, assigns, trusts, corporations, companies, partnerships, affiliates, or any entity in which they have a controlling interest.
8. "Settlement" means the settlement of the Action, as embodied in this Settlement Agreement.
9. "Settlement Amount" means \$1,000,000.

## II. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties that, subject to the conditions below, all claims in the Action shall be finally and

fully compromised, settled and released, and the Action shall be dismissed with prejudice, as follows:

**A. Payment and Dismissal of the Actions; Bar Order Approval**

1. Within thirty (30) days from the execution of this Agreement, the Settling Defendants shall cause to be deposited the Settlement Amount into an interest bearing escrow account (the "Fund") under the joint control of counsel for the Settling Defendants, on the one hand, and counsel for Plaintiff on the other, with the escrow agent and escrow instructions to be mutually agreed to by the Settling Defendants and counsel for Plaintiff (the "Escrow Funding Date"). Counsel for the Settling Defendants shall maintain joint control with Plaintiff's counsel over the Fund until five (5) business days after the Effective Date, at which time Plaintiff's counsel shall obtain sole control over the Fund. Any and all interest earned on the Fund shall become the property of Plaintiff upon the Effective Date.
2. Plaintiff acknowledges that it is responsible for the payment of any applicable taxes related to the receipt of the Settlement Amount or any amount otherwise received from the Fund.
3. Within four (4) business days of the Escrow Funding Date, the Settling Parties shall notify the District Court of the Settlement Agreement and request that the Action be suspended against the Settling Defendants.
4. It is a condition of the Settlement that the Settling Parties shall obtain entry by the District Court of an appropriate bar order (substantially in the form of the Bar and Judgment Reduction Order entered in *City of South San Francisco v. Citigroup Global Markets, Inc. et al.*, No. 09-cv-01946 (S.D.N.Y.) at docket number 813 in 09-MD-2017), barring claims for contribution or indemnification against any Settling Defendant or the other Releasees, however styled, based upon, arising from, relating to, or in connection with the Plaintiff's Released Claims (as defined below) (the "Bar Order"). Within ten (10) business days of the Escrow Funding Date, the Settling Defendants shall move the District Court for such Bar Order, and the Settling Parties shall take all reasonable steps to accomplish this result.
5. The Effective Date of this Settlement shall be the date when the Bar Order has been entered by the District Court and has become Final.
6. Plaintiff's sole remedy for the Settling Defendants' failure to cause the Settlement Amount to be deposited in the Fund is termination of the Settlement Agreement. Except as otherwise provided herein, in the event the Settlement is terminated or the Effective Date does not occur for any reason, then the Settling Parties shall be deemed have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of this Settlement Agreement and the Fund paid by the Settling Defendants, together with any interest earned thereon, less any taxes actually paid, due or incurred with respect to such income, shall be returned to the Settling Defendants within ten (10) business days of a Final order rejecting the Bar Order.
7. Within five (5) business days of the Effective Date, Plaintiff shall dismiss with prejudice pursuant to Federal Rule of Civil Procedure 41 all claims

against all Settling Defendants in the Action, and Plaintiff shall be forever barred and enjoined from asserting, prosecuting, or continuing the prosecution of the Plaintiff's Released Claims (as defined below). If the District Court issues a conditional order (or another order with the same effect) in connection with the notice provided in section II(A)(3) above, Plaintiff need not take the action described in this paragraph.

**B. Mutual Releases**

1. Upon the Effective Date, Plaintiff hereby releases and forever discharges the Releasees, and each of them individually, of and from any and all claims, suits, actions, causes of action, damages (including without limitation compensatory, punitive or exemplary damages, and disgorgement), demands, rights, debts, penalties, costs, expenses, attorneys' fees, prejudgment interest, indemnities, duties, liabilities, losses, duties, or obligations of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, fixed or contingent, direct or indirect, anticipated or unanticipated, asserted or that could have been asserted by Plaintiff, whether legal, contractual, statutory, or equitable in nature, that, inter alia, are based upon, arise from, or relate to (a) Lehman, (b) Plaintiff's investments in Lehman securities, (c) the subject matter of the Action or (d) the facts alleged in any complaint filed in the Action (the "Plaintiff's Released Claims").
2. Upon the Effective Date, Settling Defendants shall be deemed to have, and shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, and all of their past and present directors, officers, employees, agents, attorneys, and representatives, from any and all Claims based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Actions, or otherwise related to or arising from any of the Claims asserted or facts alleged in the Action, or the subject matter thereof.
3. Plaintiff warrants and represents that it is unaware of any Claims that it has against Settling Defendants or Lehman other than those brought in the Action.

**C. Waiver of Unknown Claims**

1. The Settling Parties expressly acknowledge that they may hereafter discover facts in addition to or different from those that any of them or their counsel now knows or believes to be true with respect to the subject matter of the Claims released in sections II(B)(1) and II(B)(2) or otherwise. However, upon the Effective Date, the Settling Parties each shall have expressly, fully, finally, and forever settled and released any and all Claims as set forth in sections II(B)(1) and II(B)(2), whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

**D. Confidentiality**

1. Plaintiff agrees to keep the terms and conditions of this Settlement Agreement strictly confidential and shall not disclose, discuss, reveal, or comment upon the terms of this Agreement or the Settlement to any other persons, entities, or organizations without the prior written consent of the Settling Defendants.
2. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Plaintiff from: (a) disclosing the fact that the matter has been resolved on terms satisfactory to all Settling Parties, without otherwise disclosing such terms; (b) disclosing the terms of the Agreement to its financial and tax advisors and attorneys; or (c) making such disclosures to any governmental regulators that require Plaintiff to report the terms of this Agreement and as otherwise required by law, including disclosures in response to a valid subpoena or other lawful process, provided that if any of the Settling Parties or any of its counsel are subpoenaed or otherwise lawfully required to reveal the terms of this Agreement, such Settling Party shall give prompt written notice of such subpoena or other lawful process to the other Settling Party. If Plaintiff discloses this Agreement to any of the aforementioned individuals to whom disclosure is permitted, Plaintiff shall specifically advise such individuals of this confidentiality provision and expressly condition the disclosure upon the recipient's agreement to maintain the confidentiality of this Agreement.
3. Neither the existence of this Settlement Agreement nor any of its provisions shall, absent written agreement of Settling Parties, be offered into evidence by the Settling Parties in any action, arbitration, or proceeding for any purpose whatsoever other than (i) in connection with an action, motion, or proceeding by one or more of the Settling Parties to enforce the terms of this Settlement Agreement or (ii) to the District Court (or any subsequent appellate court) in connection with the Bar Order or an order dismissing the Actions.

**E. Miscellaneous Provisions**

1. Settling Defendants and Lehman deny all charges of wrongdoing, violation of law, or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Actions. Settling Defendants enter into this Settlement Agreement solely to eliminate the uncertainties, burden, and expense of further litigation. This Settlement Agreement shall in no event be construed as or deemed to be evidence of an admission or concession by Settling Defendants or Lehman with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.
2. Plaintiff agrees not to solicit or encourage any other persons, whether individual or corporate, to commence any proceeding against Releasees or Lehman concerning the Plaintiff's Released Claims.
3. Plaintiff shall not disparage, in any way, Releasees or Lehman.
4. The Settling Parties agree that the terms of this Settlement Agreement were negotiated in good faith by the Settling Parties on an arms' length

basis, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

5. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all of the Settling Parties.
6. This Settlement Agreement constitutes the entire agreement between Plaintiff and Settling Defendants, and no representations, warranties, or inducements have been made to any Settling Party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Settlement Agreement is entered into may turn out to be materially other than or different from the facts now known to each Settling Party or believed by such Settling Party to be true; each Settling Party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Settlement Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.
7. Without in any way limiting the scope or effect of the Releases in II(B)(1) and II(B)(2), above, no Settling Party shall bear the costs, attorneys' fees or experts' fees incurred by any other Settling Party in connection with the Action and Settlement.
8. Each Settling Party represents that it, he or she has the full power and authority to enter into this Settlement Agreement; that, other than the District Court's entry of the Bar Order, there are no other persons or entities whose consent to this Settlement Agreement or whose joinder herein is necessary to make fully effective the provisions of this Settlement Agreement; that this Settlement Agreement does not and will not interfere with any other agreement to which it, he or she is a party; and that it, he or she will not enter into any agreement the execution and/or performance of which would violate or interfere with this Settlement Agreement.
9. The persons executing this Settlement Agreement on behalf of the Settling Parties represents that he or she is authorized and legally empowered to execute this Settlement Agreement on behalf of the Settling Parties.
10. Regardless of which Settling Party may have drafted this Settlement Agreement or any portion thereof, this Settlement Agreement shall be construed in all respects as jointly drafted and shall not be construed, in any way, against any Settling Party on the ground that the Settling Party or its counsel drafted the Settlement Agreement.
11. Each Settling Party warrants and represents that, as of the Effective Date, he/she/it has not transferred or assigned, and will not transfer or assign, all or any part of the Claims that are released hereby.
12. A waiver by any Settling Party hereto of a particular right under this Settlement Agreement or of a breach or default in connection with any provision of this Settlement Agreement shall not be deemed to be a waiver of any other right or subsequent default or breach of that same or any other provision of this Settlement Agreement.

13. All covenants, representations, warranties and agreements made under this Settlement Agreement or pursuant hereto or in connection with the transactions contemplated hereby shall survive the dismissal of the Actions.
14. This Settlement Agreement may be signed in counterparts, or duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be original or may be provided by facsimile or pdf.
15. Each Settling Party to this Settlement Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Settlement Agreement.
16. The District Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Settling Parties submit to the jurisdiction of the District Court for purposes of implementing and enforcing this Settlement Agreement. Such submission to the jurisdiction of the District Court shall not be deemed a waiver of personal jurisdiction defenses for any purpose other than implementation and enforcement of this Settlement Agreement.
17. This Settlement Agreement and the rights and obligations of the Settling Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of New York without giving effect to any choice of law rules or principles. To the extent permitted by law, any dispute relating to this Agreement and its enforcement will first be submitted to the Honorable Carl J. West (ret.) by way of expedited telephonic mediation.

IN WITNESS WHEREOF, each of the Settling Parties have signed or caused to be signed this Settlement Agreement as set forth below.

IRELL & MANELLA LLP

By: \_\_\_\_\_

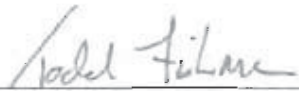


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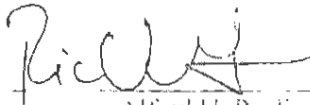
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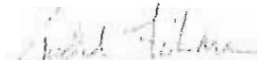
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