

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others similarly situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.
TAYLOR, RICHARD A. SUTHERLAND, and those similarly
situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND
PROFIT SHARING PLAN, on behalf of itself, and JAMES
PEHOUSHEK-STANGELAND, and all others similarly
situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**OPPOSITION OF LABATON SUCHAROW LLP TO MOTION BY LIEFF CABRASER
HEIMANN & BERNSTEIN, LLP FOR LEAVE TO FILE RESPONSE TO THE
SUBMISSION OF LABATON SUCHAROW LLP IN RESPONSE TO THE COURT'S
JUNE 28, 2019 ORDER**

Labaton Sucharow LLP (“Labaton”) opposes the Motion of Lief Cabraser Heimann & Bernstein, LLP (“Lief Cabraser”) (ECF No. 586) seeking leave to file “a short response” (the “Motion”) to the Submission of Labaton Sucharow LLP in Response to the Court’s June 28, 2019 Order (ECF No. 579) (the “Labaton Submission”). The Motion comes *after* the close of the hearing and briefing in the Court’s *de novo* review of the Master’s Report and Recommendations in this long and contentious matter, and therefore seeks to have the last word on the subject addressed therein. Lief Cabraser bases the Motion for submission of a late and otherwise impermissible legal memorandum solely on a purported need to respond to a “new contention” in the Labaton Submission. Labaton objects, quite simply, because the contention is not new at all, i.e., the issue has long existed in this case as to whether Lief can claim a higher ground simply because it believed that “some” work was performed by Damon Chargois, regardless of whether that work had a value that even remotely approached his \$4.1 million fee.

Lief Cabraser takes issue in the Motion with a single phrase in the thirty-three page Labaton Submission, to wit: that Lief Cabraser (as well as the Thornton Law Firm) was aware that Damon Chargois (“Chargois”) “produced no work product and certainly did not engage in work that would approach the value of \$4.1 million.”

The paragraph in which the challenged phrase appears is as follows:

Although Lief and Thornton have said that they did not know the full details of Labaton’s agreement, all three Customer Class Counsel firms were aware of the \$4.1 million fee shared with Chargois (*see* ECF No. 446-9); aware that no disclosure of that sharing was made (appropriately in Labaton’s belief) to the Court, the class, or ERISA counsel; and aware that Chargois entered no appearance, submitted no lodestar report, participated in none of the mediations or hearings, produced no work product and certainly did not engage in work that would approach the value of \$4.1 million.

ECF No. 586 at 2 (emphasis added). Notably, Lieff Cabraser does not contest the portions of the paragraph that are not underlined, nor does it contest any other aspect of the Labaton Submission.

The concept that Lieff Cabraser was aware that Chargois did not perform work that approached the value of the fee he received was addressed repeatedly during the proceedings before the Special Master. Namely, (1) during the cross-examination of the Master's expert, Prof. Stephen Gillers ("Prof. Gillers"), by Lieff Cabraser's own in-house counsel Richard Heimann¹; (2) during the cross examination of Lieff Cabraser's ethics expert Timothy Dacey²; and (3) in the April 12, 2018 Rebuttal Response by Labaton.³

Labaton does not contend, and has never contended, that any of the Customer Class Counsel, including Lieff Cabraser, violated any ethical rule or Federal Rule of Civil Procedure as a result of their awareness of Chargois' limited or non-existent work on the State Street matter.

¹ In response to that cross-examination, Prof. Gillers testified that Lieff Cabraser, while apparently under the impression that Chargois was acting as traditional local counsel, "never encounters Chargois" in the long life of the case. Indeed, Lieff Cabraser co-founding and retired partner Bob Lieff testified at his own deposition that he first learned Chargois' name and first recalled seeing that name in print about four weeks before his deposition. Sept. 11, 2017 Dep. of Robert Lieff (ECF No. 401-138) at 57:21-58:7. But, Garrett Bradley recalls that he told Mr. Lieff at a meeting in Dublin that there was a substantial fee obligation owed to Labaton's 'local'; that Mr. Lieff seemed to understand; and that Mr. Lieff did not ask for further details. Sept. 14, 2017 Dep. of Garrett Bradley (R&R Ex. 85) at 64:2-65:5 (cited pages included in the Master's Report & Recommendation, but not included those selected for publicly filed record, *see* ECF No. 401-84; they are available for public filing absent a confidentiality concern, or under seal if necessary). Chargois was such an inconsequential figure in Bob Lieff's mind that he didn't even remember the conversation with Bradley in Dublin, although he acknowledged that "[i]t doesn't mean it did not exist. There was just too much on my mind, and I wasn't there to talk about this case." *See* ECF No. 401-138 at 64:5-8.

² Lieff Cabraser's ethics expert Timothy Dacey, under cross-examination by Labaton's counsel at his deposition, acknowledged that Chargois never appeared at any hearing or mediation session. Apr. 9, 2018 Dep. of Timothy Dacey (R&R Ex. 237) at 75:6-77:16 (cited pages not included in publicly filed record, *see* ECF No. 401-245, but are available for public filing absent a confidentiality concern, or under seal)

³ In its Rebuttal Submission, Labaton quoted from the March 20, 2018 deposition of Prof. Gillers on this issue (p. 227:4-19) which is included as an exhibit to the Master's Report & Recommendation, but is not among the pages selected by the parties for inclusion in the public record. *See* R&R Ex. 253; ECF No. 401-264. The cited pages are available for public filing absent a confidentiality concern, or under seal if necessary.

It has contended, however, that certain facts, including the value or lack of value of Chargois' work, was known to all three Customer Class Counsel firms. Otherwise stated, Labaton has long contended that Lief Cabraser cannot claim the high ground relative to Labaton simply by believing that Chargois performed "some" work, without regard to the value of that work in relation to the fee paid.

Because the contention contained in the single challenged phrase in the Labaton Submission is not new, Labaton objects to Lief Cabraser's attempt to reopen – and have the last word on – the matter of whether Lief Cabraser was aware that Chargois did not perform work of a value approaching the fee that he received.

Labaton therefore requests that Lief Cabraser's Motion to reopen briefing be denied.

Dated: August 5, 2019

Respectfully submitted,

By: /s/ Joan A. Lukey

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on August 5, 2019.

/s/ Joan A. Lukey _____