

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,)	
on behalf of itself and all others similarly situated,)	No. 11-cv-10230 MLW
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant.)	

ARNOLD HENRIQUEZ, MICHAEL T. COHN,)	
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,)	No. 11-cv-12049 MLW
and those similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
STATE STREET GLOBAL MARKETS, LLC and)	
DOES 1-20,)	
)	
Defendants.)	

THE ANDOVER COMPANIES EMPLOYEE SAVINGS)	
AND PROFIT SHARING PLAN, on behalf of itself, and)	No. 12-cv-11698 MLW
JAMES PEHOUSHEK-STANGELAND, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant.)	

**RESPONSE BY LIEFF CABRASER HEIMANN & BERNSTEIN, LLP TO THE
COURT’S SEPTEMBER 29, 2020 ORDER [ECF NO. 646]**

Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”) respectfully submits this response to the Court’s September 29, 2020 Order [ECF No. 646], to ensure that the record concerning its previous appeal—which Lieff Cabraser plans to pursue again, with the same arguments, at the earliest opportunity—is completely clear to this Court, the Court of Appeals, and to the parties.

In its recent Order, the Court stated that “[n]either [Lieff Cabraser] nor any other counsel appealed the \$60,000,000 [fee] award” to counsel for the class, but that “[o]n March 26, 2020, Lieff [Cabraser] appealed the award to it of \$15,233,397, which is \$1,139,457 less than the amount it received as a result of the original . . . fee award.” Order at 1.

To be clear, Lieff Cabraser did appeal the \$60 million fee award, and argued that this award should be adjusted to remove any reduction in the fees awarded to Lieff Cabraser. This position was stated in multiple places in the Brief filed by Lieff Cabraser on June 9, 2020 (“Brief”)¹, and is consistent with the Notice of Appeal filed before that.

Specifically, on March 26, 2020, Lieff Cabraser filed its Notice of Appeal [ECF No. 596]. That Notice of Appeal stated that Lieff Cabraser was appealing the February 27, 2020 Memorandum and Order [ECF No. 590] and Exhibit A [ECF No. 590-1], which, *inter alia*, “(i) awarded and allocated settlement counsel’s fees and expenses out of the common settlement fund in the Actions; and (ii) found a violation of FED. R. CIV. P. 11(b).”

Subsequently, on June 9, 2020, Lieff Cabraser filed its Brief in support of the appeal. On page 33 of the Brief, Lieff Cabraser stated as follows:

This is a narrow appeal concerning specific findings and orders regarding Lieff. There is no challenge to the overall reduction in the fees awarded, *except as to the*

¹ See *Lieff Cabraser Heimann & Bernstein, LLC v. Labaton Sucharow, LLP, et al.*, 20-ap-1365 (1st Cir.), Appellant’s Br. (June 9, 2020).

*penalty assessed against Lieff,*² nor to the findings concerning other attorneys in the case. Based on the procedural and substantive failings of the court, as discussed below, Lieff appeals 1) the finding that it violated Rule 11(b); 2) the categorization of its submissions as improper; and 3) the imposition of a \$1,138,917 million penalty for its “deficiencies.”

Brief at 33.³

Later in the Brief, Lieff stated again that the only change it sought to the overall fees awarded was to remove the penalty assessed against Lieff Cabraser, which would necessarily result in a higher total fee awarded to all counsel:

Although Lieff does not challenge the reduced overall fee order to 20 percent of the class recovery, *except to the extent necessary to offset the penalty assessed against Lieff*, the underlying findings highlight the court’s legal error.

Id. at 55.

Finally, in its “Prayer for Relief,” Lieff Cabraser specifically requested that the Court of Appeals “[v]acate the portion of the order requiring payment of \$1,138,917 by Lieff *and order the fee reduction to be adjusted accordingly.*” *Id.* at 62.

Lieff Cabraser submits this response to the Court’s latest Order now so as to ensure that the record concerning its previously-stated position on appeal is completely clear, *i.e.*, that any modification made to its individually-awarded fee as a result of its appeal should result in a smaller reduction in the total fee awarded by the Court in its February 27, 2020 Order, and not in a further-reduced fee to any other law firm.⁴ This would result in an increase of the 20 percent

² All emphases herein are supplied.

³ Similarly, page 2 of the Brief states “[t]here is no appeal taken from the total award of fees except as to the order of payment imposed on Appellant for the challenged findings of misconduct.” *Id.* at 2.

⁴ Counsel for Lieff Cabraser, Richard M. Heimann, made the same representations about Lieff Cabraser’s appeal orally to the Court at the most recent hearing on September 22, 2020. *See* 9/22/20 Hearing Tr. at 13-15, 34-35.

fee awarded by the Court. As previously stated in court, Lief Cabraser will be making the same arguments to and request of the Court of Appeals when Lief Cabraser files a new appeal.⁵

Dated: October 5, 2020

Respectfully submitted,

Lief Cabraser Heimann & Bernstein, LLP

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⁵ *See id.*

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on October 5, 2020 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”).

/s/ Richard M. Heimann

Richard M. Heimann