

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

SPECIAL MASTER'S MOTION TO SEAL
SPECIAL MASTER'S LETTER SUBMITTED TO COURT (UNDER SEAL)

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's letter submitted to this Court (Under Seal), to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the letter be filed under seal.

Dated: June 22, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
Boston, MA 02108
Telephone: (617) 720-5090
Facsimile: (617) 720-5092
Email: wsinnott@barrettsingal.com
Email: emcevoy@barrettsingal.com

CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on June 22, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

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Defendant.

**SPECIAL MASTER'S MOTION FOR LEAVE TO FILE
LETTER WITH COURT (UNDER SEAL)**

The Special Master respectfully moves for leave to file a letter with this Honorable Court, to be filed under seal until further Court order. Special Master seeks the Court's guidance on certain issues arising in connection with the Special Master's Report and Recommendations and continuing role in the post-Report stage of the above-captioned case. The Special Master's letter is Exhibit A to this Motion.¹

WHEREFORE, Special Master respectfully requests that the Court grant its motion for leave.

Dated: June 22, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
Boston, MA 02108
Telephone: (617) 720-5090
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/s/ William F. Sinnott
William F. Sinnott

¹ This Motion for Leave to File Letter is being filed via ECF, along with Special Master's Motion to Seal his letter. The Special Master's letter, which is Exhibit A to this motion, is subject to the pending Motion to Seal and is thus being filed conventionally under seal.

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Defendant.

No. 12-cv-11698 MLW

**MOTION OF CUSTOMER CLASS COUNSEL FOR PROCESS ASSOCIATED WITH
RELEASE OF REPORT BEFORE RELEASE OF EXHIBITS**

Without waiving their objection to the public release of the Master's Report & Recommendations ("Report") *before* the public release of the exhibits thereto, but, rather, expressly reiterating their request that the Report be withheld until the exhibits can be released simultaneously, Labaton Sucharow LLP, Lief Cabraser Heimann & Bernstein, LLP, and the Thornton Law Firm LLP (collectively, "Customer Class Counsel") request implementation of the following protocol, in the event that the Court proceeds over that objection with the public release of the Report alone:

First, that the Court permit the parties two business days, or at very least one business day, from the Court's e-service of the Report on the parties until the moment of its public release, in order to allow simultaneous public release of the parties' Objections to the Report.

As grounds for this request, Customer Class Counsel say that, given their extraordinarily strong objections to certain of the Master's findings of fact and rulings of law, it is critically important to Customer Class Councils' due process rights that the Objections to the Report be available to the public at the same time that the Report becomes available to the public.¹ Presenting exclusively one partisan view of the facts and perspectives on the law, while withholding the other view, would cause irreparable prejudice to Customer Class Council. But, the parties cannot publicly release their Objections without having the opportunity to conform them to the final redactions as determined by the Court. Otherwise, the Firms run the risk of revealing that which the Court intended to keep under seal.

¹ In the words of Daniel Webster, due process of law is "a law, which hears before it condemns . . ." *Trs. of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 624 (1819). The likelihood of "condemnation" is high if the public hears first only one highly partisan version of the facts and law, to wit: that of the Master. If that is to occur, Customer Class Council's due process rights will be violated.

The presumption of public access to which the Court has repeatedly made reference does not eliminate the Court's role as gatekeeper, nor does it derogate the parties' rights to due process of law. A short delay of two, or at least one, business day(s) to allow an essentially simultaneous public release of the Report and the Objections to the Report will not defeat the presumption in favor of public access and is consistent with the Court's obligations as gatekeeper.

Second, that the parties be permitted to include in their Objections unredacted quotes or paraphrasing of language located in an exhibit that is still under seal, if no party has redacted that language in their proposed redactions.

Presumably the extent of the permitted redactions in the Report itself will be finalized by the time of the public release of the Report. But, if the Report is released without the exhibits over Customer Class Counsel's objection, the parties will not yet know which redactions will be retained in the exhibits. This in turn means that the parties will potentially be prevented from referencing or quoting broad swaths of information from the exhibits that no participant suggests should be redacted, e.g., the circumstance where two pages contain redactions in a 100 page deposition transcript. Such a limitation unnecessarily circumscribes the Objections to the Report in a manner that interferes with the parties' ability to present publicly the areas of dispute. In this instance, the presumed right of public access unequivocally favors Customer Class Counsels' position: The more information that can be released without offending any participant's perceived need for a redaction, the more information that the public will be able to review without further delay.

Conclusion

Customer Class Counsel renew their request in the first instance that the Court refrain from publicly releasing the Report until such time as it is in a position to rule upon redaction requests and release the exhibits as well. In the event that the Court will not honor that request, Customer Class Counsel pray (a) that the Court provide them with two business days, or at minimum one business day, to conform their Objections to the redactions determined by the Court, before the public release of the Report; and (b) that they be permitted in their Objections to cite to, and quote from, portions of exhibits that are not the subject of a redaction request by any party.

June 26, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
Stuart M. Glass (BBO No. 641466)
CHOATE, HALL & STEWART LLP
Two International Place
Boston, MA 02110
Tel.: (617) 248-5000
Fax: (617) 248-4000
joan.lukey@choate.com
jwolosz@choate.com
sglass@choate.com

Counsel for Labaton Sucharow LLP

By: /s/ Richard M. Heimann

Richard M. Heimann (pro hac vice)
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Tel: (415) 956-1000
Fax: (415) 956-1008
rheimann@lchb.com

*Counsel for Lieff Cabraser Heimann &
Bernstein, LLP*

By: /s/ Brian T. Kelly

Brian T. Kelly, Esq. (BBO No. 549566)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
Tel.: (617) 345-1000
Fax: (617) 345-1300
bkelly@nixonpeabody.com

Counsel for The Thornton Law Firm LLP

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Labaton's counsel contacted other counsel in this case in order to confer regarding the substance of this motion. The Special Master and McTigue Law LLP oppose the first request in the motion and take no position on the second request. Keller Rohrback and Zuckerman Spaeder take no position on either request. State Street takes no position on the first request; as to the second request, (1) with respect to deposition transcripts, State Street is in the process of conferring with counsel for the Special Master and may propose an alternate process to the one set forth herein; and (2) State Street does not oppose the relief requested with respect to exhibits that are not deposition transcripts.

/s/ Joan A. Lukey
Joan A. Lukey

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on June 26, 2018.

/s/ Joan A. Lukey _____
Joan A. Lukey

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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on behalf of itself and all others similarly situated,

Plaintiff,

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Defendant.

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situated,

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STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**LABATON SUCHAROW LLP'S MOTION TO IMPOUND THE
OPPOSITION OF LABATON SUCHAROW LLP TO SPECIAL MASTER'S
MOTION FOR LEAVE TO FILE LETTER WITH COURT (UNDER SEAL)**

1. Pursuant to Fed. R. Civ. P. 7(b) and District of Massachusetts Local Rule 7.2, Labaton Sucharow LLP (“Labaton”) respectfully moves to impound the Opposition of Labaton Sucharow LLP to Special Master’s Motion for Leave to File Letter with Court (Under Seal) (“Labaton’s Opposition”).¹

2. On May 16, 2018, this Court issued an Order confirming that the Special Master’s Report and Recommendations, the related Executive Summary, and all attached exhibits (collectively, the “Master’s Submission”) are currently under seal in their entirety, and setting forth a process by which the parties may seek redactions so that a public version could be unsealed. ECF 223.

3. Labaton’s Opposition contains substantive discussion of the Master’s Report and Recommendations, which is currently under seal. In addition, Labaton’s Opposition discusses information from the discovery record generated by the Master, which is also not public. Because this information is currently under seal per this Court’s orders (or otherwise not public), the non-redacted version of Labaton’s Opposition should also be kept under seal temporarily.

4. Moreover, Labaton’s Opposition responds to the Master’s June 25, 2018 letter, which was submitted to the Court under seal. Because the Master submitted his letter under seal, Labaton is submitting its Opposition under seal.

5. Accordingly, there is good cause pursuant to D. Mass. L.R. 7.2 to impound the non-redacted version of Labaton’s Opposition.

6. Labaton is including with its conventional filing a redacted version of its Opposition, should the Court wish to make the redacted version public.

¹ This Motion to Impound is being filed via ECF. Labaton’s Opposition is being filed conventionally, under seal.

WHEREFORE, for the reasons set forth herein, Labaton requests that the Court impound the non-redacted version of the Opposition of Labaton Sucharow LLP to Special Master's Motion for Leave to File Letter with Court (Under Seal).

Dated: June 26, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
Stuart M. Glass (BBO No. 641466)
CHOATE, HALL & STEWART LLP
Two International Place
Boston, MA 02110
Tel.: (617) 248-5000
Fax: (617) 248-4000
joan.lukey@choate.com
jwolosz@choate.com
sglass@choate.com

Counsel for Labaton Sucharow LLP

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Labaton's counsel contacted other counsel in this case in order to confer regarding the substance of this motion. The Thornton Law Firm, Lief Cabraser Heimann & Bernstein LLP, and State Street do not oppose the request. The Special Master, McTigue Law LLP, Keller Rohrback L.L.P. and Zuckerman Spaeder LLP take no position on the request.

/s/ Joan A. Lukey

Joan A. Lukey

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on June 26, 2018.

/s/ Joan A. Lukey

Joan A. Lukey

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**SPECIAL MASTER'S MOTION TO SEAL STATEMENT OF
PROFESSOR STEPHEN GILLERS' AVAILABILITY FOR ADDITIONAL
DEPOSITION TESTIMONY AND/OR PARTICIPATION (UNDER SEAL)**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Statement of Professor Stephen Gillers' Availability for Additional Deposition Testimony And/Or Participation (Under Seal), to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the Statement be filed under seal.

Dated: June 26, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
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/s/ William F. Sinnott
William F. Sinnott