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Kaplan, Pomerantz Among Firms Sought To Lead Libor Cases

By **Vin Gurrieri**

Law360, New York (September 16, 2014, 7:54 PM ET) -- Four putative classes of lenders, students, homeowners and mortgage holders accusing a slew of major banks in multidistrict litigation of rigging the London Interbank Offered Rate each urged a New York federal judge on Monday to appoint firms such as Pomerantz LLP and Kaplan Fox & Kilsheimer LLP as class counsel.

U.S. District Judge Naomi Reice Buchwald granted the classes leave to file lead counsel appointment motions as part of a Sept 5. order. The lenders pushed the judge to appoint Pomerantz as interim lead counsel, and the mortgage holder class urged her to appoint Kaplan Fox & Kilsheimer LLP and Block & Leviton LLP as interim co-lead counsel for their class.

The homeowners group and student loan group also urged the judge to create a new putative class for each. The homeowners sought to appoint Baron & Budd PC to represent it, and the student loan class members seek to be represented by Edelman Combs Lattuner & Goodwin LLC.

Each motion told Judge Buchwald that if approved, the firms will commit the necessary time and resources and act in the best interest of each class.

"Proposed interim class counsel is the most adequate counsel to represent and protect the interests of the lender class members, and will also promote the efficient management of the litigation and judicial economy," the lenders' motion said. "The firm's skills and resources are unquestioned, and the firm has recognized expertise in the appropriate areas at issue."

The homeowner group's motion and the student loan holders' motion each contended that no other class group established in the MDL adequately protects their unique interests.

The mortgage holder class, whose members held adjustable rate mortgages indexed to the six-month and 12-month U.S. dollar Libor rate, said that Kaplan & Fox and Block & Leviton satisfy the criteria for lead counsel and have substantial expertise in prosecuting complex cases, including MDLs.

Additionally, Monday's motion by the lenders requested that the court consolidate two separate cases filed on behalf of lenders, one brought by the Berkshire Bank and the Government Development Bank for Puerto Rico and the other brought by Directors Financial Group, because they arise from common facts and present sufficiently common legal questions.

The cases are part of a larger MDL accusing the major banks including Bank of America Corp., Barclays Bank Plc., Credit Suisse Group AG, Deutsche Bank AG and JPMorgan Chase & Co. of costing investors potentially billions of dollars by manipulating Libor, a key interest rate set daily in several currencies by the British Bankers' Association based on submissions from a panel of major banks.

Although the plaintiffs in the MDL had initially alleged violations of the Sherman Antitrust Act, Judge Buchwald dismissed the antitrust claims **in March 2013**. At the time, the judge said that

the plaintiffs couldn't point to any actual competition-related injuries, pointing out that the BBA-rate submission process was not designed to be a competitive one.

She **later ruled** in August that the plaintiffs should not be able to revive their antitrust allegations because their attorneys already had the opportunity to strengthen their claims when filing their consolidated complaints.

After the Second Circuit refused to hear appeals concerning the dismissed antitrust claim, another group of Libor plaintiffs filed a petition asking the U.S. Supreme Court to weigh whether a dismissed suit in a consolidated action can be immediately appealed, even if claims still remain in the larger case.

A class of so-called over-the-counter plaintiffs **joined that effort** in late April, arguing in an amicus brief that the high court take up the petition.

In June, Judge Buchwald ruled that investors could add claims that Barclays and Rabobank's day-to-day trading in the Eurodollar futures market manipulated Libor. The judge also dismissed Societe Generale SA from the suit because the investors' claims against it were time-barred.

The June ruling left intact the OTC plaintiffs' unjust enrichment and breach of the implied covenant of good faith claims, but only against banks they transacted with directly: UBS AG, Deutsche Bank, Barclays, Citibank NA and Credit Suisse Group.

Jeremy Lieberman of Pomerantz LLP, an attorney representing the lenders, told Law360 Tuesday that the firm is not aware of any other firms seeking leadership of the lenders' claims.

Attorneys for the mortgage and homeowner classes were not immediately available for comment.

The lender class is represented by Jeremy A. Lieberman, Marc I. Gross and Francis P. McConville of Pomerantz LLP.

The mortgager class was represented by Gregory K. Arenson and Richard J. Kilsheimer of Kaplan Fox & Kilsheimer LLP and Jeffrey C. Block, Whitney E. Street and Erica G. Sorg of Block & Leviton LLP.

The homeowner class was represented by Daniel Alberstone, Roland Tellis, Mark Pifko, Michael Isaac Miller and David Fernandes of Baron & Budd PC.

The student loan group is represented by Daniel A. Edelman of Edelman Combs Lattuner & Goodwin LLC.

The banks are represented by Marc J. Gottridge of Hogan Lovells, Thomas C. Rice of Simpson Thacher & Bartlett LLP, Robert F. Wise Jr. of Davis Polk & Wardwell LLP and Sidley Austin LLP, among others.

The case is In re: Libor-based Financial Instruments Antitrust Litigation, case number 1:11-md-02262, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Michael Lipkin, Melissa Lipman and Alissa Wickham. Editing by Brian Baresch.

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