

LAW OFFICE OF
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February 7, 2006

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Via Federal Express

Roseann B. Mackechnie
Clerk of the Court
Court of Appeals, Second Circuit
Thurgood Marshall U.S. Courthours
40 Foley Square Room 1803
New York, NY 10007

Re: Civ. No 05-0609-cv, LoPresti c. Citigroup, Inc.; United States District Court for the
Eastern District of New York

Dear Ms. MacKechnie:

Enclosed for filing the above –referenced matter is the original and four copies of
Appellants Motion to serve a Supplemental Appendix.

Please file-mark the extra copy and return it to me in the enclosed self –addressed Fed Ex
envelope. By copy of this letter, a copy of the enclosed is being provided to all counsel of
record.

Thank you for your assistance in this matter.

Sincerely,



Henry M. Grubel, P.C.

05-0609 cv

**In the United States Court of Appeals
for the Second Circuit**

LoPresti v. Citigroup, Inc.

On Appeal from the United States District Court
For the Eastern District of New York

Motion for leave to serve 5 page Supplemental Appendix

Henry M. Grubel, P.C.
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Attorney for the Appellant

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square, Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption: [use short title]

Docket Number(s): 05-0609-cv

LoPresti v. Citigroup, Inc

Motion for: Service of Supplemental Appendix

Set forth below precise, complete statement of relief sought:

Appellant seeks leave to serve 5 page supplemental appendix

MOVING PARTY:

- Plaintiff Defendant
- Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY:

MOVING ATTORNEY: Henry M. Grubel
[name of attorney, with firm, address, phone number and e-mail]

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Freeport, NY, 11520 (516) 623-4130
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OPPOSING ATTORNEY [Name]: Gregroy S. Coleman
[name of attorney, with firm, address, phone number and e-mail]

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8911 Capital of Texas Hwy., Suite 13450
Austin, Texas 78759 (512) 349-1930
greg.coleman@weil.com

Court-Judge/Agency appealed frm:

Please check appropriate boxes:

- Has consent of opposing counsel:
 - A. been sought? Yes No
 - B. been obtained? Yes No
- Is oral argument requested? Yes No
(requests for oral argument will not necessarily be granted)
- Has argument date of appeal been set? Yes No
If yes, enter date

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

- Has request for relief been made below? Yes No
- Has this relief been previously sought in this Court? Yes No
- Requested return date and explanation of emergency:

Signature of Moving Attorney:

Date: 2/7/06

Has service been effected? Yes No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT: ROSEANN B. MacKECHNIE, Clerk of Court

Date:

By: _____

Appellant respectfully requests that the court permit appellant to serve a five page supplemental appendix.

The supplemental appendix contains the cover sheet of the Lutheran Medical Center § 403(b) Summary Plan Description.

The supplemental appendix was attached to the end of Appellant's reply brief to the opposition interposed by Citigroup Inc. and Lutheran Medical Center.

Said reply brief was served by overnight service on January 27, 2006.

To this date no motion was made by the appellees to strike the supplemental appendix.


The supplemental appendix reveals that Lutheran Medical Center has a § 403(b) annuity plan which limits participation in the plan to certain employees only.

Appellant asserts that universal eligibility is required in a § 403(b) plan. This is but one of the elements that would be considered by the trier of the facts, and adds weight to appellant's argument that the District Court erred in making the findings of fact to support the 12(b)6 dismissal of this action.

Appellant respectfully requests the court to grant him leave to serve the five page supplemental appendix as aforesaid.

Dated: February 7, 2006
Freeport, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'H. Grubel', written over a horizontal line.

Henry M. Grubel (HG-3211)
Henry M. Grubel, P.C.
Attorney for Appellant
37 Prospect Street
Freeport, NY 11520
516-623-4130

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

CARMINE A. LOPRESTI,

Plaintiff,

05-06909

-against-

CERTIFICATE OF SERVICE

CITIGROUP, INC., et. al.

Defendants.

-----X

On February 7, 2006, counsel for the plaintiff served the motion to serve a supplemental appendix upon the appellees who have appeared in this action as follows, all were served by Fed Ex overnight service:

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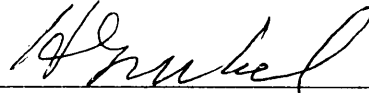
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Citistreet Associates, LLC; Citistreet Equities, LLC; Citistreet
Financial Services, LLC; Travelers Insurance Company, Mayda
Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney, Inc.;
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Attorneys for Buck Consultants; and Buck Consultants, Inc.

Dated: February 7, 2003
Freeport, N.Y.



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