

HENRY M. GRUBEL, P.C.
Attorney at Law
37 Prospect Street
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May 5, 2003

Hon. Viktor V. Pohorelsky
U.S. Magistrate Judge
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: LoPresti: v. Citigroup
CV-02-6492(SJ) (VVP)

Dear Judge Pohorelsky,

I am writing you to request that you recuse yourself as the Magistrate in this case. This request is made in letter-format, rather than by motion at the suggestion of your law clerk Mr. James Toritto.

Your biography on the website of this Court indicates that you served as an Assistant U.S. Attorney in the Southern District of New York. Another A.U.S.A., Ping Moy also served in the same office. It appears that both of you were there during overlapping periods of time.

Mr. Moy is now employed as Vice President and General Counsel of a lead defendant herein, Lutheran Medical Center.

I have no idea, and have made no inquiries regarding the nature and extent, if any, of how your professional and or personal paths may have crossed with Mr. Moy's.

Pursuant to: 28 U.S.C. § 455(a); Litkey v. United States, 510 U.S. 540 (1994); and In Re Aguinda, 241 F.3d 194 (2nd Cir. 2001), it is respectfully submitted that in order to avoid the appearance of bias or impartiality, arising out of an "extrajudicial source" that you recuse yourself as the Magistrate herein.

All counsel are being copied herewith. This letter is written without prejudice to plaintiff's, making a formal motion for your recusal hereafter as the case may be.

Respectfully,

Henry M. Grubel (3211)
Attorney for the
plaintiff

cc:

Hon. Sterling Johnson, Jr.
U.S. District Judge
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

David J. Lender, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue, Room 3547
New York, NY 10153

Michael H. Ference, Esq.
Sichenzia, Ross, Friedman Ference, LLP
1065 Avenue of the Americas
New York, NY 10018

David Covey, Esq.
Sedgwick, Detert, Moran & Arnold
125 Broad Street, 39th Floor
New York, NY 10004

Ping Moy, Esq.
V.P. and General Counsel
Lutheran Medical Center
150 55th Street
Brooklyn, New York 11220

**Law Office of
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Phone - (516) 623-4130**

June 22, 2004

Hon. Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: CV-02-6492, LoPresti v. Citigroup, Inc., et al.

Dear Judge Pohorelsky:

Plaintiff respectfully requests clarification of your order dated June 17, 2004 to hold a hearing on July 16, 2004, on plaintiff's motion pursuant to 28 U.S.C. §§ 144 and 455 to disqualify you as Magistrate Judge in this matter.

Briefly stated, it is my understanding of the law that your sole function at this juncture is to pass on the legal sufficiency of plaintiff's Affidavit of Bias and Prejudice that was submitted in support of his motion to disqualify you herein.

This is a question of law for you to rule upon. It is my further understanding that once you have ruled on the legal sufficiency of plaintiff's affidavit, another judge, other than yourself, must rule on plaintiff's motion. Further, for purposes of the motion, plaintiff's allegations as set forth in his affidavit of bias must be accepted by the Court as being true.

Accordingly, I do not understand what issues will be left to address at the hearing you ordered. As such, I can not properly prepare for the hearing unless you advise all parties with some specificity, about its focus, purpose, etc., in a timely manner.

Respectfully,

Henry M. Grubel (3211)
Attorney for plaintiff

CC: All Counsel (see annexed)
Judge Sterling Johnson, Jr.
Chief Judge Edward R. Korman
Chief Magistrate Judge Michael L. Orenstein

David Lender, Esq.
Weil Gotshal and Manges, LLP
767 Fifth Avenue
New York, NY 10153

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October 15, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ) (VVP)

Dear Judge Johnson:

I represent the plaintiff in this action. Plaintiff's motion to disqualify Magistrate Judge Viktor V. Pohorelsky for his bias and prejudice against the plaintiff, and in favor of the defaulted defendants CITISTREET and COPELAND ASSOCIATES, Inc., was denied by Magistrate Judge Pohorelsky.

Plaintiff appealed the decision to the Second Circuit Court of Appeals, via a Writ. The Writ was denied, per a copy of the decision which is annexed hereto, on the ground, *inter-alia*, that plaintiff had not sought the requested relief from you, as the Judge in this matter.

The moving papers, opposing papers and reply papers to disqualify Magistrate Judge Pohorelsky were served and filed in July of this year. Courtesy copies were sent to your chambers.

Plaintiff requests that you review and consider said original moving papers, the opposition thereto, the reply, and the transcript of the hearing held by Magistrate Judge Pohorelsky on the motion to disqualify him.

Plaintiff requests that upon such review and consideration, that you overrule the decision of Magistrate Judge Pohorelsky, and grant plaintiff's motion to disqualify Magistrate Judge Pohorelsky from this case.

Respectfully submitted,

Henry M. Grubel

Cc: Without enclosure.

Hon. Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

All defense attorneys as follows:

David J. Lender, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue, Room 3547
New York, NY 10153

Michael H. Ference, Esq.
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New York, NY 10018

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New York, NY 10004

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June 22, 2004

Hon. Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: CV-02-6492, LoPresti v. Citigroup, Inc, et al.

Dear Judge Pohorelsky:

Plaintiff respectfully requests clarification of your order dated June 17, 2004 to hold a hearing on July 16, 2004, on plaintiff's motion pursuant to 28 U.S.C. §§ 144 and 455 to disqualify you as Magistrate Judge in this matter.

Briefly stated, it is my understanding of the law that your sole function at this juncture is to pass on the legal sufficiency of plaintiff's Affidavit of Bias and Prejudice that was submitted in support of his motion to disqualify you herein.

This is a question of law for you to rule upon. It is my further understanding that once you have ruled on the legal sufficiency of plaintiff's affidavit, another judge, other than yourself, must rule on plaintiff's motion. Further, for purposes of the motion, plaintiff's allegations as set forth in his affidavit of bias must be accepted by the Court as being true.

Accordingly, I do not understand what issues will be left to address at the hearing you ordered. As such, I can not properly prepare for the hearing unless you advise all parties with some specificity, about its focus, purpose, etc., in a timely manner.

Respectfully,

Henry M. Grubel (3211)
Attorney for plaintiff

CC: All Counsel (see annexed)
Judge Sterling Johnson, Jr.
Chief Judge Edward R. Korman
Chief Magistrate Judge Michael L. Orenstein

David Lender, Esq.
Weil Gotshal and Manges, LLP
767 Fifth Avenue
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**Law Office of
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November 8, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ) (VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

This letter is written in response to the letter from Weil Gotshal & Manges LLP, dated November 2, 2004, addressed to you regarding a decision of New York State Supreme Court Justice Catherine Demarest, dated October 6, 2004.

In view of the fact that Mr. LoPresti will be appealing the decision, I will not go into the details of the appellate points that will be raised.

However, as to the distinction made by Mr. Lender to the N.Y. State Attorney General's action against Marsh and McClennan, it is to be noted that the bottom line in the State's case is the same as in the LoPresti case that is now before Your Honor.

To wit: the destruction of honest competition in the relevant insurance markets, all to the detriment and damage of the ultimate consumer and those like LoPresti who are caught in the crossfire, and to the benefit of the carriers, the brokers and their co-conspirators, as is clearly set forth in this case, in which we have not held any discovery as yet.

You will also note, from the copy of the complaint in the Kings County action which was sent to you by Mr. Lender, that

plaintiff made no E.R.I.S.A or fiduciary claims therein, as they were made in the above captioned matter.

Justice Demarest's decision predated her having seen the copy of the Spitzer complaint that was sent to her by the undersigned. Whether it would have had any impact on her decision I do not know, but she did send me a short letter about this.

It would well behoove Weil Gotshal & Manges LLP, and Mr. Lender, to read the huge article about their client which takes up most of the front page of the November 7, 2004, New York Times Sunday Business Section 3 and all of page 7.

The Times article is essentially a puff piece, considering all of the frauds in which CITIGROUP has been implicated. It is presented beneath the photo of an executive scrubbing on a wash board into a wash basin. It is captioned: **CITIGROUP, It's Cleanup Time at Citi, A New C.E.O. Aims to Overhaul the Superbank's Culture.**

As the defendants herein have failed to give their unqualified consent to plaintiff's submission of an amended complaint herein, a motion requesting leave of the Court to serve said amended complaint, will be made before Your Honor very shortly.

Respectfully submitted,

Henry M. Grubel

Via: Fedex to Judge Johnson
& by regular first class
U.S. mail to all ccs:

Cc:

Hon. Viktor V. Pohorelsky
David J. Lender, Esq.
Michael H. Ference, Esq.
David Covey, Esq.

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November 11, 2004

Hon. Viktor V. Pohorelsky
U.S. Magistrate Judge
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: LoPresti: v. Citigroup
CV-02-6492 (SJ) (VVP)

Dear Judge Pohorelsky,

As a follow up to plaintiff's submission to the Court of the data about the fifty-six U.S. employers who have verified to the Department of Labor, under penalty of perjury, in their Form 5500 filings that CITISTREET was the broker or agent of their pension plan, I am enclosing herewith a copy of the blue ribbon and gold seal, Records Authentication Certificate, which plaintiff obtained from the U.S. Department of Labor, wherein they enclosed a true copy of the Form 5500 filing of the defendant LUTHERAN MEDICAL CENTER, for plan year 2002.

The enclosed copy of page one thereof, is the LMC Form 5500 signed under penalty of perjury by Steven J. Barry on 10/19/03 on Lutheran's behalf.

The enclosed copy of page three thereof, indicates that the insurance carrier is the defendant TRAVELERS INSURANCE COMPANY, and that \$23,513 in commissions were paid out.

The enclosed copy of page four thereof, identifies the defendant CITISTREET located at TWO TOWER CENTER, EAST BRUNSWICK, NJ 08816, as being the agent or broker who received the sum of \$23,513 in commissions.

Plaintiff offers this proof, in addition to the previously submitted proof of the existence of the defendant CITISTREET for your consideration.

It is also offered in further support of plaintiff's application to have the Clerk of this Court note the default of CITISTREET on the docket of this case, and in further support of plaintiff's motion for sanctions under Rule 11, both of which have been referred to you for a report and recommendation by the Hon. Judge Sterling Johnson, Jr.

Respectfully submitted,

Henry M. Grubel (3211)
Attorney for the
plaintiff

cc:

Hon. Sterling Johnson, Jr.
U.S. District Court Judge

David J. Lender, Esq.
Michael H. Ference, Esq.
David Covey, Esq.

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November 15, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ) (VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Enclosed herewith is a copy of an article from the New York Times dated November 13, 2004.

Also enclosed is a copy of the complaint downloaded from the N.Y. State Attorney General's website captioned People v. Universal Life Resources, et al., the basis for the article.

The issues raised in the enclosed complaint are similar to the issues in the instant case.

Further, Attorney General Spitzer is seemingly undeterred by the decision of State Supreme Court Justice Carolyn Demarest, (which Mr. Lender sent to you), in subsequently filing his action under the Donnelly Act, which LoPresti raised in his State action. As previously indicated LoPresti is appealing the decision.

Plaintiff respectfully requests that the Court consider the above N.Y.S. case filing, in further opposition to the pending motions under F.R.C.P. 12(b)(6).

Respectfully submitted,

Henry M. Grubel

Cc: with enclosures, to all counsel &
Magistrate Judge Viktor Pohorelsky
N.Y.S. Attorney General, w/o enclosures.

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December 13, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ)(VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Plaintiff respectfully appeals to your honor and requests that you rescind a certain order of the magistrate judge issued on November 30, 2004. Said order directed that a hearing be held on plaintiff's motion for sanctions under Rule 11 against Weil Gotshal & Manges, attorneys for the CITIGROUP defendants herein.

Both the limited focus and purpose of the Rule 11 hearing, and the ordered ground rules thereof, are extremely biased and prejudicial to the plaintiff. The magistrate judge and Weil Gotshal are pressuring plaintiff to appear at the hearing.

Under the ground rules established by the magistrate judge he is convening a Kangaroo Court in favor of Weil Gotshal and against plaintiff.

In the alternative, if the ordered hearing and its ground rules are not rescinded, and if a new magistrate judge is not assigned, then plaintiff requests that he be permitted to withdraw his pending Rule 11 motion, without prejudice.

You assigned plaintiff's motions for default judgments against CITISTREET and COPELAND ASSOCIATES, Inc. to the magistrate judge, per your order dated October 26, 2004.

You also assigned plaintiff's motion for Rule 11 sanctions against Weil Gotshal and Manges to the magistrate judge for a report and recommendation.

1. Your order dated October 26, 2004 established the issue that would be dispositive of plaintiff's motion for sanctions under Rule 11 as follows:

Because the Motions regarding sanctions under Rule 11 are grounded in issues of the existence or non-existence of Defendants Citistreet and Copeland Associates, Inc. and in Defendants Copeland Associates, Inc. and Citigroup's degree of awareness of their existence or non-existence----

2. Your October 26, 2004 order also went on to state:

Because Magistrate Judge Pohorelsky is already conducting discovery regarding the existence of these defendants in response to plaintiff's motions for default judgment, this Court ORDERS that plaintiff's motion for sanctions under rule 11 also be referred to Magistrate Judge Pohorelsky for report and recommendation. NOTE: (Plaintiff is unaware of any discovery, regarding the existence of these defendants ever having taken place, or being conducted by the magistrate judge.)

3. In a recent order by the magistrate judge dated November 10, 2004, it was directed that counsel appear on November 30, 2004 to attend a scheduling conference on these matters.

4. All counsel, except for counsel representing LUTHERAN MEDICAL CENTER and its named employees, appeared at the ordered November 30, 2004 scheduling conference.

5. The magistrate judge stated that all parties may appeal his rulings within 10 (ten) days of receiving the transcript of the subject proceedings, which he would supply to us via ECF service. On December 7, 2004, I was told by his chambers that we would have the transcript by the end of that week.

6. It is now 10:00am Monday, December 13, 2004 and no transcript has been posted by ECF. Accordingly, the statements herein contained about what transpired at the November 30, 2004 scheduling conference proceeding are from my memory and my notes. Plaintiff is unable to have a record on which to appeal the rulings. Weil Gotshal and the magistrate judge are pressuring plaintiff to attend a hearing that would make it impossible for plaintiff to assert his right to obtain a hearing on a level playing field, before an impartial court.

7. The magistrate judge said he would hold a hearing on plaintiff's motion for sanctions. Sanctions are being sought by plaintiff *inter alia*, for the refusal of Weil Gotshal to admit that overwhelming proof exists to show that CITISTREET is a joint venture co-owned by CITIGROUP, Inc. and STATE STREET CORPORATION.

8. According to your order the primary issue to be determined is whether CITISTREET is a Joint Venture and whether COPELAND ASSOCIATES, Inc. is a de facto corporation and the knowledge of CITIGROUP concerning these issues. Weil Gotshal claims that CITISTREET and COPELAND ASSOCIATES, Inc. are non-existent entities of any sort.

9. Weil Gotshal is also arguing that CITISTREET is not a joint venture. They argue that CITISTREET is really CITISTREET LLC., which is a party to this case, for whom they have already appeared.

10. Weil Gotshal argues vigorously and incorrectly, that a business entity can be both a Joint Venture and a Limited Liability Company at the same time.

11. The magistrate judge gave us some of his available dates in January to hold the hearing on these issues. Asking that he be advised as to what date we can agree upon. I have not agreed to any date for the hearing because of the fact that the hearing will be a charade to find sanctions against me and will not focus on the issues presented in your order.

THE RULE 11 HEARING GROUND RULES

12. My recollection of the ground rules which the magistrate judge mandated at the November 30, 2004 proceeding, for the Rule 11 hearing he proposes to hold on plaintiff's motion for sanctions against Weil Gotshal are as follows:

- Plaintiff will be unable to present any direct affirmative proof whatsoever, in support of his motion for sanctions at the Rule 11 hearing.
- The magistrate judge will allow only one witness to testify at the hearing.
- The sole witness who will be allowed to testify is to be a Mr. Robert Dughi.
- Mr. Dughi is biased. He is the CEO of CITISTREET LLC. He swore an affidavit for Weil Gotshal & Manges in opposition to plaintiff motion for sanctions.
- Plaintiff will be prohibited from subpoenaing any documents into the hearing.

- Plaintiff will be prohibited from issuing any witness subpoenas for the hearing.
- Plaintiff may not issue a subpoena to have the attorney from Kelley, Drye & Warren LLP testify. He has asserted as part of his bio. that he represented STATE STREET in the formation of the Joint Venture called CITISTREET between STATE STREET and CITIGROUP.
- Plaintiff may not call any witnesses on his behalf.
- Plaintiff was merely given leave to cross examine defendant's Mr. Dughi.
- The hearing will be limited in time to three(3) hours.
- According to the magistrate judge, the stated purpose for calling Mr. Dughi as the sole witness, is to determine if Weil Gotshal had a reasonable basis for asserting to the court that CITISTREET and COPELAND ASSOCIATES, Inc. are existing entities. This is a clearly prejudicial ruling and is not the measure by which a Rule 11 motion is to be determined, under the circumstances of this case.
- Accordingly, under these circumstances, a decision by the magistrate judge in favor of Weil Gotshal, is preordained to be in their favor, and it appears to me that he has indicated that he will impose costs and sanctions against me, as requested by Weil Gotshal as measured by the astronomical fees that they say they are charging.
- No direct proof will be allowed to be introduced by plaintiff as to the existence of CITISTREET or COPELAND ASSOCIATES, Inc.
- Further, it seems to me that the magistrate judge deems the issue of whether CITISTREET or COPELAND ASSOCIATES, Inc. actually exist, is irrelevant to his inquiry.
- Your order to have the magistrate judge hear and report on the central core questions, of whether there is a Joint Venture called CITISTREET, and whether COPELAND ASSOCIATES, Inc. is a business entity of any sort are being ignored by the magistrate judge.

13. Plaintiff respectfully requests that you reject and rescind the discriminatory, biased and prejudicial ground rules the magistrate judge established for this hearing. They violate plaintiff's rights in so many respects. They are totally in favor

of Weil Gotshal, and against the plaintiff and myself.

14. Plaintiff respectfully requests that you assign a new magistrate judge to this case, due to his past demonstrated bias and prejudice against plaintiff, and the refusal of this magistrate judge to provide plaintiff with an unbiased court and a level playing field to present his evidence in support of his Rule 11 motion, as it was assigned to him by your order.

15. Further, at the November 30, 2004 scheduling conference, the magistrate judge issued summary denials of plaintiff's motion for default judgments and to have the Clerk note the defaults of CITISTREET and COPELAND ASSOCIATES, Inc. He did this without taking any proof on the issues whatsoever. These decisions are dispositive and will be appealed by plaintiff to your honor for a de novo review and appeal, within the time allowed therefore by the Federal Rules, after we get the transcript. There is also authority for the holding that sanctions under Rule 11 are also treated as being dispositive.

16. The magistrate judge continues demonstrating his bias and prejudice against plaintiff, and in favor of the defendants by denying plaintiff his rights under FRCP 1, to a '--JUST, SPEEDY, and INEXPENSIVE determination --' of his action. He also is going contrary to your 10/26/04 order.

17. In my opinion, based upon the foregoing, the magistrate judge has stacked the deck against the plaintiff and myself, to hold the hearing on plaintiff's motion for sanctions against Weil Gotshal, whose outcome is preordained in favor of Weil Gotshal.

18. The refusal to allow plaintiff to present affirmative proof and deny him subpoena power is at best unjust, and at worst convenes a Court partial to Weil Gotshal. It ill befits the spirit and dictates of the Federal Rules in every respect.

19. Appeal of these rulings to your honor is a must at this time because Weil Gotshal and the magistrate is pressuring me, as seen in his memorandum dated December 6, 2004, to set a firm date for this hearing as soon as possible in January 2005, without giving the plaintiff his statutory right to appeal his rulings.

20. The Magistrate's ruling that he will not take any proof from the plaintiff or me at the hearing, shows that he is not impartial. He has prejudged the matter against my client and myself, all in violation of Canons 1, 2 & 3 of the Model Code of Judicial Conduct, all to plaintiff's and my extreme prejudice. It is improper in every respect and requires your attention.

21. Unless plaintiff can obtain a full and fair hearing, regarding the existence or non existence of the Joint Venture known as CITISTREET and the corporate status of COPELAND ASSOCIATES, Inc., before an impartial court with a level playing

field, plaintiff requests that you allow him to withdraw his motion for sanctions without prejudice.

22. The magistrate judge is convening a 'hearing' that violates the spirit and essence of your orders dated 10/26/04, and the Federal Rules.

WHEREFORE, for the reasons hereinabove stated plaintiff respectfully requests that you rescind the terms and conditions of the hearing that were imposed by the magistrate judge, and that you assign a new magistrate judge to this matter. In the alternative, plaintiff requests your permission to withdraw his motion for sanctions, without prejudice.

Respectfully,

Henry M. Grubel

Cc: Hon. U.S. Magistrate Judge Viktor V. Pohorelsky
David Covey, Esq.
Michael Ference, Esq.
David Lender, Esq.

Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
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VIA FEDERAL EXPRESS

December 22, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ)(VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Please be advised that on or about November 30, 2004 plaintiff served a Notice of Motion, Affidavit and Memorandum of Law, for leave to serve a third amended complaint in this matter. Plaintiff also enclosed a blacklined copy of the second amended complaint and the proposed third amended complaint.

Plaintiff filed all of these documents by ECF as well. I do not know if the ECF filing replaces the need to provide you with a copy of a covering letter, so I am sending this to you.

As soon as I receive all of the opposition papers and serve a Reply, I will make copies of all the papers and send you the courtesy copies thereof.

Plaintiff tried to file one of his replies yesterday by ECF, but to no avail, in that the Court's site was off line, so I mailed the first reply to all counsel and the Court today. I will keep trying to get online and file the papers via ECF.

Respectfully,

Henry M. Grubel

Cc: Hon. U.S. Magistrate Judge Viktor V. Pohorelsky
David Covey, Esq.
Michael Ference, Esq.
David Lender, Esq.
All ccs sent by First Class U.S.P.S.

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December 26, 2004

VIA FEDERAL EXPRESS

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ)(VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Enclosed herewith is plaintiff's motion under Rule 72 to rescind the orders issued by Magistrate Judge Viktor V. Pohorelsky at a proceeding held on November 30, 2004, which I wrote to you about in a letter dated December 13, 2004.

For the reasons set forth in the enclosed motion, plaintiff respectfully requests that you stay the hearing scheduled for January 5, 2005, pending your hearing and decision on this motion.

Plaintiff respectfully requests that you issue a briefing order herein, because the 10 days allowed by the FRCP to answer to respond to this motion will run out after the January 5, 2005 hearing date. This motion was filed electronically today.

Respectfully,

Henry M. Grubel

Cc: Hon. U.S. Magistrate Judge Viktor V. Pohorelsky, w/encs
David Covey, Esq.
Michael Ference, Esq.
David Lender, Esq.

Via usps to all counsel w/o enclosures

**Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4130**

December 26, 2004

VIA FEDERAL EXPRESS

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ)(VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Enclosed herewith are are courtesy copies of plaintiff's motion for leave to serve a third amended complaint, his affidavit in support, and his memo of law.

The opposition briefs from the two firms who oppose the motion and the plaintiff's replies thereto.

This motion has now been fully briefed.

Respectfully,

/s

Henry M. Grubel

Cc: Hon. U.S. Magistrate Judge Viktor V. Pohorelsky, w/encs
David Covey, Esq.
Michael Ference, Esq.
David Lender, Esq.

Via usps to all counsel w/o enclosures

**Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4130**

January 3, 2005

VIA FEDERAL EXPRESS

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ) (VVP)

Dear Judge Johnson:

I represent the plaintiff in this action. Plaintiff just learned that the magistrate judge and his wife have been doing business with Citibank, a subsidiary of Citigroup. He never revealed this to me.

According to the records I saw today at the Kings County Clerk' office, it appears that Citibank holds the mortgage on the house or coop, that the magistrate judge owns. His mortgage was assigned from Chase Manhattan Mortgage Corporation to Citibank, NA. This was recorded or filed on March 29, 2001 at 12:16:31 AM.

It also appears that the magistrate judge received an increase in his loan. He was lent more money by Citibank pursuant to filings made in the County Clerk's records on April 7, 2004.

If the Clerk's files in Brooklyn are correct, justice demands that the magistrate judge be recused from this case as soon as possible, that the orders he issued should all be vacated, there be a referral of these findings to the appropriate entities, and that the hearing he has scheduled for January 5, 2005 be cancelled.

Respectfully,

Henry M. Grubel

Cc: Hon. U.S. Magistrate Judge Viktor V. Pohorelsky.
David Covey, Esq.
Michael Ference, Esq.
David Lender, Esq.

Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4130

January 13, 2005

Hon. Sterling Johnson, Jr.,
Senior United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ)(VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Plaintiff writes this letter to respectfully advise the Court that the Memorandum and Order you signed on January 11, 2005 contains erroneous statements of critical fact. The order states at page five (5) that plaintiff failed to file timely objections to the November 30, 2004 orders of the magistrate judge.

To the contrary, plaintiff wrote you a letter setting forth his objections to the subject order on December 13, 2004. It is reflected in docket # 164. I did an ecf filing thereof and fedexed to you a courtesy thereof. At that time I had not yet received a copy of the transcript.

Docket entry number 167 dated 12/15/04 reflects the fact that Weil Gotshal and Manges LLP filed a letter in opposition to my letter of 12/13/04.

Docket entry # 165 dated 12/12/04 was entered on 12/14/04. It reflects the fact that the transcript of the 11/30/04 proceeding was docketed. A copy of the transcript could not be downloaded.

On 12/15/04 I received a copy of the transcript of the 11/30/04 proceeding, via fedex, from Magistrate Judge Pohorelsky.

On 12/14/04 I had ordered a copy of the transcript and the tapes from Aria reporters. I received them on 12/16/04 from Aria.

At the 11/30/04 proceeding Magistrate Judge Pohorelsky ruled

at page 28 line 1 as follows: '*Any objections to the report and recommendation should be directed to Judge Johnson within ten days after you receive a copy of the transcript of this report—*'

As reflected in docket # 176, on 12/27/04 plaintiff duly filed his notice of motion, affidavit in support and memo of law to vacate the and appeal the orders of the magistrate judge that were issued on 11/30/04. The same day courtesy copies of plaintiff's Rule 72 motion papers, were also sent by federal express next day delivery, to you and the magistrate judge.

Having received the transcript on 12/15/04, it is respectfully submitted, that according to the methods of calculating time periods as set forth in FRCP 6(a), plaintiff was timely in serving on 12/27/04, his appeal of the rulings made at the 11/30/04 proceeding.

Pursuant to docket # 184, entered on 1/11/04, Weil Gotshal & Manges LLP, filed their memorandum in opposition to plaintiff's motion under FRCP 72.

In view of the foregoing, it is respectfully requested that you withdraw your order dated 1/11/04, and conduct a *de novo* review of the dispositive decisions rendered and made by the magistrate judge at the 11/30/04 proceeding, as requested in plaintiff's Rule 72 motion.

Respectfully,

/s

Henry M. Grubel
(HG-3211)

Cc: Hon. U.S. Magistrate Judge, Viktor V. Pohorelsky
David Lender, Esq.
David Covey, Esq.
Michael Ference, Esq.

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January 19, 2005

Hon. Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: LoPresti: v. Citigroup
CV-02-6492 (SJ) (VVP)

Dear Magistrate Judge Pohorelsky,

I respectfully request, that if you are considering awarding counter sanctions against me, in plaintiff's recent FRCP Rule 11 motion, that prior thereto you allow me to exercise my due process rights, to be advised by the court, about why you feel that counter sanctions are warranted against me.

Thereafter, I respectfully request the right to heard on the record, and address why such sanctions against me are not warranted.

I could not properly address the sanctions issue(s) as presented at the hearing, because I did not know what the specifics or the basis of the alleged counter sanctions were, that made you feel that they were warranted in this dispute.

Thereafter, I will be in a position to brief with specificity, why counter sanctions are not warranted herein.

Respectfully submitted,

Henry M. Grubel(3211)
Attorney for the
plaintiff

cc: Hon. Judge Sterling Johnson, Jr.
David Lender, Esq.
David Covey, Esq.
Michael Ference, Esq.