

applies for writs of prohibition, and/or for writs of mandamus, directed to the United States District Court for the Eastern District of New York.

THE RELIEF SOUGHT

1. A Writ of Mandamus to compel the Clerk of the Court of the Eastern District of New York, to note the default of the defendants CITISTREET and COPELAND ASSOCIATES, Inc. on the Court's docket of this case pursuant to § 55(a) of the Federal Rules of Civil Procedure.

2. In the alternative, a Writ of Prohibition to prevent the Clerk of the Court from refusing to note the default of the defendants CITISTREET and COPELAND ASSOCIATES, Inc. on the Court's docket of this case pursuant to F.R.C.P. 55(a).

3. A Writ of Mandamus to compel the Clerk of the Court of the Eastern District of New York, to properly maintain the Court's docket of the instant case, pursuant to F.R.C.P. 79(a).

4. In the alternative a Writ of Prohibition to prevent the Clerk of the Court from refusing to maintain and make docket entries in this case in accordance with the procedures set forth in F.R.C.P. § 79(a).

5. A Writ of Prohibition, to prevent the currently assigned Magistrate Judge from holding a hearing on July 16,

2004 on petitioner's motion pursuant to 28 USCS §§ 144 and 455(b)(1) to disqualify the assigned Magistrate Judge.

6. In the alternative, a Writ of Mandamus to compel the Magistrate Judge to determine the legal sufficiency of petitioner's affidavit of bias, and upon finding it to be legally sufficient, that he cease having any further connection to the instant case, and have the Court appoint another magistrate judge.

7. A writ prohibiting the District Court from allowing the law firm of Weil, Gotshal and Manges LLP to advocate, argue and lawyer on behalf of the defendants who have deliberately defaulted in appearing, and expunging from the record in this case, any letters, documents, affidavits, and opposition to petitioner's motion for a default or final judgment against CITISTREET and COPELAND ASSOCIATES. INC, which have been filed and accepted by the District Court, despite the fact that the defaulted defendants have not appeared in this action by counsel or otherwise.

THE ISSUES PRESENTED

1. Is it proper for the Clerk of the Court to refuse to make the notation of a defendant's default on the Court's docket of this case, when petitioner has complied with the requirements of F.R.C.P. 55(a) and has submitted a proper affidavit in support of his request to have the defaults noted by the Clerk on the Court's docket of this case?

2. Is it proper for the Clerk of the Court to fail or refuse to enter on the docket of this case the filing or receipt of numerous papers from the parties that are filed or received by the Court in this case as required by F.R.C.P. Rule 79(a)?

3. Is it proper for the Magistrate Judge to hold a hearing on petitioner's motion to disqualify the Magistrate Judge, in view of the wording of 28 USCS § 144?

4. Is it proper for the District Court to allow a law firm to advocate, lawyer and file papers on behalf of a defendant who has defaulted, without having said law firm enter its appearance on behalf of said deliberately defaulted defendants?

THE FACTS NECESSARY TO UNDERSTAND THE ISSUES
PRESENTED BY THE PETITION

This action lies in ERISA, anti-trust, RICO, and various N.Y. State claims. All of the defendants herein have appeared with the exception of CITISTREET and COPELAND ASSOCIATES. INC. They were both duly served with process and have deliberately defaulted.

On March 13, 2003 petitioner served and filed his request of the Clerk to enter on the docket of this case the defaults of the defendants CITISTREET AND COPELAND ASSOCIATES, INC., pursuant to F.R.C.P. Rule 55(a). The request was accompanied by my affidavit as attorney for the

petitioner, in support of the request to enter the default on the docket. See Exhibit 'A'.

Petitioner alleges that, according to the CITISTREET web site at www.citistreetonline.com, CITISTREET is a self described Joint Venture co-owned equally 50/50 by Citigroup, Inc. and State Street Corp. That CITISTREET has some \$190 billion under management, and 3,000 employees with offices world wide, which makes it one of the largest employee benefit firms in the world.

Petitioner alleges that COPELAND ASSOCIATES, Inc. is a de facto corporation which was writing checks, and was still authorized to do business, years after it dissolved.

Weil, Gotshal and Manges LLP avers that neither of the defendants CITISTREET nor COPELAND ASSOCIATES, INC. exist in any cognizable form.

The defendants CITISTREET and COPELAND ASSOCIATES, INC. have not appeared in this action. The firm of Weil, Gotshal and Manges LLP however, without appearing on their behalf, wrote a letter addressed to the Deputy Clerk of the Court on behalf of the defaulting defendants wherein they alleged that the defendants CITISTREET and COPELAND ASSOCIATES, INC. were non cognizable and/or non existent legal entities. See Exhibit 'B'.

On May 14, 2003 the Weil firm submitted affidavits in opposition and an extensive memorandum of law in opposition

to petitioner's motion for default and final judgments against CITISTREET and COPELAND ASSOCIATES, INC., without appearing on their behalf. See Exhibit 'C'.

Over petitioner's objections that Weil lacks any standing herein, the District Court has accepted all of the filings submitted by the Weil law firm on behalf of CITISTREET and COPELAND ASSOCIATES, INC, even though they have not appeared as counsel for these defendants.

Prior thereto, and thereafter there was an exchange of various letters on the issue of the non existence of these defendants between the Weil firm, my firm, and the Clerk of the Court. See Exhibit 'D'.

Annexed hereto as Exhibit 'E' is a letter dated May 7, 2004 from the Clerk of the Court addressed to me as counsel for the petitioner, wherein the Clerk of the Court stated that he refuses petitioner's request to note the default of the defendant CITISTREET and the defendant COPELAND ASSOCIATES, INC. pursuant to F.R.C.P. 55(a), due to the factual dispute between counsel as to the existence of the deliberately defaulted defendants.

At the bottom of his letter dated May 7, 2004 the Clerk states 'A copy of this reply will be docketed.'

Annexed hereto as Exhibit 'F', are the docket sheets of this case as of June 30, 2004. The letter from the Clerk has not been docketed to date. The docket sheets also show that

there have been no appearances entered or made on behalf of CITISTREET and COPELAND ASSOCIATES, INC, yet the Clerk of the Court, the Judge, and the Magistrate Judge have each accepted argument and lawyering from the Weil firm on behalf of these defendants, all to petitioner's prejudice.

A search of the docket sheets in this case also reveals that the Clerk has failed to docket the petitioner's formal request for the Clerk to note the defaults of CITISTREET and COPELAND, which was duly filed by the petitioner in Central Islip and date stamped by the Clerk on March 13, 2003. See Exhibit 'A'.

The Clerk failed to docket the letter addressed to Mr. Giokas, the Chief Deputy Clerk of the District Court, from Weil, Gotshal and Manges LLP dated March 17, 2003, which is annexed hereto as Exhibit 'B'.

Other correspondence regarding the defaults has also not been entered by the Clerk in the docket of this case. See Exhibit 'D'

The Clerk failed to enter on the docket of this case receipt of petitioner's cover letter regarding supplemental reply papers, involving newly discovered materials relevant to petitioner's motion for a default judgment. The papers were filed and date stamped on May 19, 2003. See Exhibit 'G'.

Docket number 60 incorrectly states 'Counsel for all sides present', with regard to a proceeding held on July 7, 2003.

Annexed hereto as Exhibit 'H', is the first page of the transcript of the proceeding showing that only two Weil Gotshal attorneys and myself were present at the proceeding.

Docket entries 90 and 91 are non descriptive of what petitioner had addressed in the subject letters.

Docket number 82 editorializes on behalf of the defaulted defendants CITISTREET and COPELAND, by stating that they are non-existent entities.

The Clerk has failed to timely docket the receipt by the Court of petitioner's motion to disqualify the Magistrate Judge, and the transmittal letter. Both were duly filed with the Court Clerk in Central Islip and date stamped on June 15, 2004. See Exhibit 'I'.

The Clerk's failure to docket the filing of petitioner's motion to disqualify the Magistrate Judge which had been filed on June 15, 2004, in chronological order makes docket entry numbers 84, 88 and 86 appear out of context.

The motion to disqualify the Magistrate Judge was filed electronically by petitioner on June 25, 2004. Receipt of the electronic filing of petitioner's motion to disqualify

the Magistrate Judge is reflected on the docket sheet as entry #87. Docket number 87 was assigned by the Pacer system to the entry, and not by the Clerk of the Court, when plaintiff made his electronic filing.

The procedural objections by the Judge to petitioner's filing of the motion to disqualify the Magistrate Judge as set forth in docket entry number 89, was misplaced, in that the motion was addressed to the Magistrate Judge, thus petitioner had to conform to the rules of the Magistrate Judge, which provide that the motion be filed when served, and not according to the Judge's rules that forbid filing of the motion until it is fully briefed.

The Clerk has failed to docket receipt of the transmittal letter of petitioner's motion under F.R.C.P. Rule 11, for sanctions against Weil, Gotshal and Manges, LLP which was sent out by the petitioner on June 2, 2004. See Exhibit 'J'.

After the motion to disqualify the Magistrate Judge was served and filed by the petitioner on June 15, 2004, see Exhibit 'K', the Magistrate Judge issued an order to hold a hearing on July 16, 2004 on petitioner's motion to disqualify the Magistrate Judge. See Exhibit 'L'

Petitioner, by letter dated June 22, 2004 requested clarification of the order and questioned the propriety of

having the hearing to be held by the subject of the motion for disqualification. See Exhibit 'M'.

In response to plaintiff's requested clarification of his order the Magistrate Judge issued a Memorandum dated June 25, 2004. See Exhibit 'N'. The Magistrate Judge will hold the hearing concerning the motion to disqualify him.

The Clerk failed to docket in this case the letter from Weil, Gotshal and Manges dated June 15, 2004, wherein they state they will oppose petitioner's motion for sanctions against them under Rule 11. See Exhibit 'O'.

THE REASONS WHY THE WRITS SHOULD BE ISSUED

1. The Clerk is obligated to docket the defaults of the defendants CITISTREET and COPELAND under F.R.C.P. 55(a). It is mandatory that he note the default after plaintiff has provided the Clerk with the appropriate affidavit in support.

F.R.C.P. 55(c) provides a defaulted party with the right to move to vacate the default for cause shown. By having assumed a discretionary posture on this issue, the Clerk is usurping a judicial function. The Clerk has deprived the petitioner of the ability to obtain a default judgment against defendants who have deliberately defaulted. The Clerk's entry, or noting the default on the Court's docket, while a formality, is a pre-requisite to having plaintiff obtain a default Judgment. The action of the Clerk

is a windfall to the deliberately defaulted defendants, and totally prejudicial to the petitioner.

2. The Clerk of the Court has violated his duties as set forth in F.R.C.P. Rule 79, entitled 'Books and Records Kept by the Clerk and Entries Therein' which reads in pertinent part 'ALL PAPERS FILED WITH THE CLERK ----- SHALL BE ENTERED CHRONOLOGICALLY IN THE CIVIL-- DOCKET' (emphasis supplied).

As hereinabove set forth the Clerk is not entering ALL of the papers filed by the parties and he is not entering the filings chronologically in this case. The docket on this case is inadequate and misleading in character. Even papers that have been date stamped as being received by the Clerk's office have not been docketed by the Clerk.

3. As to the motion to disqualify the Magistrate Judge, upon receipt of a timely and sufficient affidavit the Judge shall proceed no further on the matter and another judge assigned, 28 USCS § 144. The Magistrate Judge's sole function upon receipt of petitioner's motion, is to determine if petitioner's affidavit of bias and prejudice is legally sufficient. If he determines that it is legally sufficient he must immediately discontinue his involvement in the case and another judge must be assigned, Berger v. United States (1921) 255 U.S. 22. A judge may not sit in judgment of himself.

4. CITISTREET and COPELAND ASSOCIATES, INC. have not appeared in this action. The Weil firm has not entered any appearance on their behalf. Weil has no standing to oppose petitioner's motion for a default judgment or petitioner's request to enter the default on the docket of this case, and the Court should expunge from its records anything received from Weil, Gotshal and Manges on behalf of CITISTREET and COPELAND ASSOCIATES, INC.

For the reasons hereinabove set forth it is respectfully requested that this Court issue the writs prayed for herein, or such other and different relief as this Court deems just and proper.

Dated: June 30, 2004
Freeport, New York



Henry M. Grubel (3211)
Henry M. Grubel, P.C.
Attorney for Petitioner
37 Prospect Street
Freeport, N.Y. 11520
516-623-4100

EXHIBIT 'A'

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action, File Number: CV-02-6492 (SJM)

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

★ MAR 13 2003 ★

ENTERED

★ _____ ★

CARMINE A. LOPRESTI, Individually, and)
in his fiduciary capacity under the)
EMPLOYEE RETIREMENT INCOME SECURITY)
ACT of 1974, under the Lutheran Medical)
Center § 403(b) Tax Sheltered Annuity)
Plan)

Plaintiff,)

-against-)

CITIGROUP, INC., WENDY Z. GOLDSTEIN,)
MILES H. KUCKER, ALLEN SCHECHTER,)
HOWARD SMITH, WILLIAM D. MYHRE,)
DON GOLDSTEIN, STATE STREET CORPORATION,)
CITISTREET, CITISTREET, LLC,)
CITISTREET ASSOCIATES, LLC,)
CITISTREET EQUITIES, LLC,)
CITISTREET FINANCIAL SERVICES, LLC,)
TRAVELERS INSURANCE COMPANY.,)
LUTHERAN MEDICAL CENTER,)
BUCK CONSULTANTS, BUCK CONSULTANTS, INC.)
MAYDA CASADO, JEAN DESJARDINS,)
JIM WILSON, SMITH BARNEY CORPORATE)
TRUST COMPANY, SALOMON SMITH BARNEY,)
INC., COPELAND ASSOCIATES, INC.,)
Each and every defendant individually,)
And in their fiduciary capacities,)
under EMPLOYEE RETIREMENT INCOME)
SECURITY ACT of 1974, under the)
Lutheran Medical Center § 403(b) Tax)
Sheltered Annuity Plan)
SANFORD I. WEILL, and DAVID A. SPINA)

Defendants.)

REQUEST TO CLERK TO
ENTER DEFAULT AS TO
THE DEFENDANTS
CITISTREET AND
COPELAND ASSOCIATES,
INC.

REQUEST TO CLERK TO ENTER DEFAULT

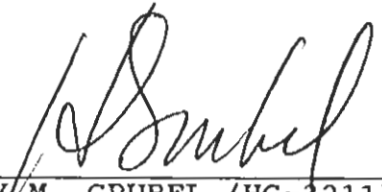
To: The Clerk of the United States District Court, Eastern
District of New York

The defendant CITISTREET having failed to answer or otherwise
appear in the above entitled action and the time for appearance
having expired, you are requested to enter said defendant's

default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

The defendant COPELAND ASSOCIATES INC., having failed to answer or otherwise appear in the above entitled action and the time for appearance having expired, you are requested to enter said defendant's default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Dated: Freeport, New York
March 12, 2003



HENRY M. GRUBEL (HG-3211)
HENRY M. GRUBEL, P.C.
Attorney for Plaintiff
CARMINE A. LOPRESTI
37 Prospect Street
P.O. Box 628
Freeport, New York 11520
516-623-4130

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK
Civil Action, File Number: CV-02-6492 (SJ)
(RLM)

CARMINE A. LOPRESTI, Individually, and)
in his fiduciary capacity under the)
EMPLOYEE RETIREMENT INCOME SECURITY)
ACT of 1974, under the Lutheran Medical)
Center § 403(b) Tax Sheltered Annuity)
Plan)

Plaintiff,)

-against-)

CITIGROUP, INC., WENDY Z. GOLDSTEIN,)
MILES H. KUCKER, ALLEN SCHECHTER,)
HOWARD SMITH, WILLIAM D. MYHRE,)
DON GOLDSTEIN, STATE STREET CORPORATION,)
CITISTREET, CITISTREET, LLC,)
CITISTREET ASSOCIATES, LLC,)
CITISTREET EQUITIES, LLC,)
CITISTREET FINANCIAL SERVICES, LLC,)
TRAVELERS INSURANCE COMPANY.,)
LUTHERAN MEDICAL CENTER,)
BUCK CONSULTANTS, BUCK CONSULTANTS, INC.)
MAYDA CASADO, JEAN DESJARDINS,)
JIM WILSON, SMITH BARNEY CORPORATE)
TRUST COMPANY, SALOMON SMITH BARNEY,)
INC., COPELAND ASSOCIATES, INC.,)
Each and every defendant individually,)
And in their fiduciary capacities,)
under EMPLOYEE RETIREMENT INCOME)
SECURITY ACT of 1974, under the)
Lutheran Medical Center § 403(b) Tax)
Sheltered Annuity Plan)
SANFORD I. WEILL, and DAVID A. SPINA)

Defendants.)

AFFIDAVIT IN SUPPORT
OF REQUEST OF CLERK
TO ENTER A DEFAULT
UNDER FRCP 55(a) AS
AGAINST THE DEFENDANTS
CITISTREET & COPELAND
ASSOCIATES, INC.

State of New York)

County of Nassau).ss:

HENRY M. GRUBEL, being duly sworn deposes and says:

1. I am the attorney for the plaintiff in the above action
and submit this affidavit in support of plaintiff's application to

have the Clerk of this Court enter a default against two of the defendants herein, CITISTREET and COPELAND ASSOCIATES, INC., under FRCP 55(a), for their failure to timely answer, plead, move, or otherwise appear in this action in response to the complaints that were served upon them.

2. On December 16, 2002, your affiant mailed a notice of lawsuit and request for waiver of service of summons to the defendant CITISTREET. (See Exhibit "A")

3. On January 8, 2003, Robert C. Dughi returned the waiver of service of summons that was sent to CITISTREET. Mr. Dughi signed the waiver in his capacity as President of CITISTREET, LLC, a different defendant herein. (See Exhibit "B")

4. A copy of the face sheet of the original complaint is annexed hereto. (See Exhibit "C")

5. The capacity in which Mr. Dughi signed the waiver of service of summons as the president of a co-defendant herein and not as an officer of CITISTREET made the waiver of service of summons as to CITISTREET defective, and of no relevance.

6. Thereafter an Amended Summons and Complaint was served on the defendant CITISTREET on February 5, 2003. (See Exhibit "F1&2")

7. Then a Second Amended Summons and Complaint was served on the defendant CITISTREET on February 24, 2003. (See Exhibit "F3")

8. On December 16, 2002, your affiant mailed a notice of lawsuit and request for waiver of service of summons to the defendant COPELAND ASSOCIATES, INC. (See Exhibit "D")

9. No signed waiver of service of summons was ever received back from COPELAND ASSOCIATES, INC. (See Exhibit "E" the blank waiver)

10. Thereafter an Amended Summons and Complaint was served on the defendant COPELAND ASSOCIATES INC., on February 7, 2003. (See Exhibit "F4")

11. Then a Second Amended Summons and Complaint was served on the defendant COPELAND ASSOCIATES INC., on February 25, 2003. (See Exhibit "F5")

12. The returns of service of the Amended Summons and Complaint and Second Amended Summons and Complaint are on file in this action as to the defendants CITISTREET and COPELAND ASSOCIATES INC. (See Exhibit "F1-5")

13. The defendant CITISTREET, has not answered or otherwise appeared in this action and the time within which said defendant may appear has expired.

14. The defendant COPELAND ASSOCIATES, INC., has not answered or otherwise appeared in this action and the time within which said defendant may appear has expired.

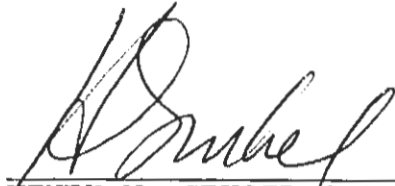
15. A letter from Weil, Gotshal & Manges dated February 4, 2003 stated that the defendants CITISTREET and COPELAND ASSOCIATES, INC. were non-existent entities and requested that plaintiff delete them from the caption. (See Exhibit "G")

16. The foregoing letter is not in the nature of an answer or an appearance.

17. Plaintiff vigorously contests that these defendants do not exist, the letter from Weil, Gotshal, & Manges, to the contrary notwithstanding.

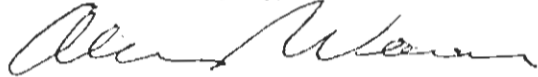
WHEREFORE, it is respectfully requested that the Clerk of this Court enter defaults as to the defendants CITISTREET and COPELAND ASSOCIATES, INC.

Dated: Freeport, New York
March 12, 2003



HENRY M. GRUBEL (HG-3211)
HENRY M. GRUBEL, P.C.
Attorney for Plaintiff
CARMINE A. LOPRESTI
37 Prospect Street
P.O. Box 628
Freeport, New York 11520
516-623-4130

Subscribed and sworn to before me
on March 12, 2003



ALLAN WEINER
Notary Public, State of New York
No. 01WE9576506
Qualified in Nassau County
Term Expires March 30, 2006

EXHIBIT 'B'

EXHIBIT 'C'

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action File Number: CV-02-6492 (SJ) (VP)

----- X
:
CARMINE A. LoPRESTI, Individually, and in his :
fiduciary capacity under the EMPLOYEE :
RETIREMENT INCOME SECURITY ACT of :
1974, under the Lutheran Medical Center § 403 (b) :
Tax Sheltered Annuity Plan :
:
Plaintiff, :
:
- against - :
:
CITIGROUP INC., WENDY Z. GOLDSTEIN, :
MILES H. KUCKER, ALLEN SCHECHTER, :
HOWARD SMITH, WILLIAM D. MHYRE, DON :
GOLDSTEIN, STATE STREET CORPORATION, :
CITISTREET, CITISTREET INCORPORATED, :
CITISTREET, LLC, CITISTREET ASSOCIATES, :
LLC, CITISTREET EQUITIES, LLC, :
CITISTREET FINANCIAL SERVICES, LLC, :
TRAVELRS INSURANCE COMPANY, :
LUTHERAN MEDICAL CENTER, BUCK :
CONSULTANTS, BUCK CONSULTANTS, INC., :
MAYDA CASADO, JEAN DESJARDINS, JIM :
WILSON, SMITH BARNEY CORPORATE :
TRUST COMPANY, SALOMON SMITH :
BARNEY, INC., COPELAND ASSOCIATES, :
INC., SANFORD I. WEILL and DAVID A. :
SPINA, each and every defendant individually, and :
in their fiduciary capacities, under the EMPLOYEE :
RETIREMENT INCOME SECURITY ACT of :
1974, under the Lutheran Medical Center § 403(b) :
Tax Sheltered Annuity Plan :
:
Defendants. :
----- X

DEFENDANTS' MEMORANDUM
OF LAW IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT
(SJ)
(VP)

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE
★ MAY 14 2003 ★
ENTERED
★ _____ ★

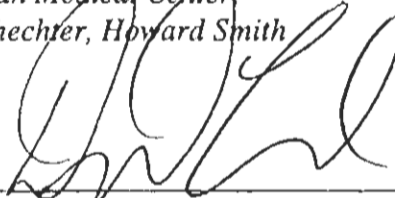
CERTIFICATE OF SERVICE

I, DAVID LENDER, hereby certify that on May 8, 2003 the foregoing **Defendants' Memorandum of Law in Support of Opposition to Plaintiff's Motion for Default Judgment, the Affidavit of Robert C. Dughi and the Affidavit of David Lender** were served by Federal Express, overnight delivery, upon the parties set forth below:

Henry M. Grubel, Esq. (HG-3211)
HENRY M. GRUBEL, P.C.
37 Prospect Street
P.O. Box 628
Freeport, New York 11520
(516) 623-4130
(516) 623-1989 (facsimile)
Attorney for Plaintiff

Kimberly S. Penner, Esq. (KP-1763)
SEDGWICK, DETERT, MORAN & ARNOLD LLP
125 Broad Street, 39th Floor
New York, New York 10004
(212) 422-0202
(212) 422-0925 (facsimile)
Attorneys for Defendants Buck Consultants and Buck Consultants Inc.

Michael H. Ference, Esq. (MF-7600)
SICHENZIA ROSS FRIEDMAN FERENCE LLP
1065 Ave. of the Americas, 21st Floor
New York, New York 10018
(212) 930-9700
(212) 930-9725 (facsimile)
*Attorneys for Defendants Wendy Z. Goldstein,
Miles H. Kucker, Lutheran Medical Center
William D. Myhre, Allen Schechter, Howard Smith*



David J. Lender (DL-1554)

Dated: New York, New York
May 8, 2003

EXHIBIT 'D'

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE • NEW YORK, NY 10153-0119

(212) 310-8000

FAX: (212) 310-8007

DALLAS
HOUSTON
MENLO PARK
(BRICON VALLEY)
MIAMI
WASHINGTON, D.C.BRUSSELS
BUDAPEST
FRANKFURT
LONDON
PRAGUE
WARSAWWRITERS DIRECT LINE
212-310-8505
peter.hageman@weil.com

January 3, 2003

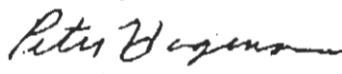
BY FACSIMILEHenry M. Grubel, Esq.
Henry M. Grubel, P.C.
37 Prospect Street
P.O. Box 628
Freeport, NY 11520Re: Carmine A. LoPresti v. Citigroup, Inc., et al
Civil Action File No. Cv-02-6492

Dear Mr. Grubel:

Enclosed please find a stipulation with respect to the answer date for the defendants we are representing, consistent with what you discussed with David Lender. Please send the executed stipulation back to this office and we will see that it is filed with the Court.

In addition, as you discussed with David Lender, please amend the caption of the Complaint and the body of the Complaint in the above-referenced matter to accurately reflect the correct parties. Specifically, Citistreet, Citistreet, Inc. and Copeland Associates, Inc. do not exist; instead, the correct name of the Citistreet entity is Citistreet, LLC and Copeland Associates, Inc. merged into Citistreet Associates, LLC. In addition, because Smith Barney Corporate Trust Company is a cognizable legal entity, we ask that you delete the Complaint's reference to Solomon Smith Barney, Inc. Should you have any questions, please feel free to contact us. Thanks for your cooperation.

Cordially,



Peter Hageman

PH/vjr

Enclosure

HENRY M. GRUBEL, P.C.
Attorney at Law
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4100 Fax - (516) 623-1989

January 7, 2003

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

Via: Fax 212-310-8007 & U.S. Mail

Re: LoPresti v. CitiGroup, et.al.
CV-02-6492 (SJ)

Dear Mr. Lender:

At this time I see no need for a stipulation regarding when an answer will be due, in that this is all set forth in the Rule 4(d) letter that was sent to each defendant with the text prescribed pursuant to Rule 84.

All that is needed at this time is the return of the FRCP Rule 4 Waivers of Service, by January 16, 2003 for each defendant. Per Rule 4(d) an original and a copy of the waiver was served on each defendant, together with the complaint.

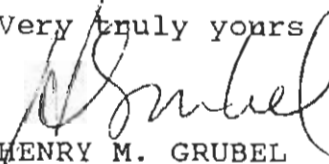
Plaintiff must file a waiver of service for each defendant with the Court.

As I indicated yesterday, plaintiff will not amend the caption and body of the complaint to delete CITISTREET and CITISTREET, INC., as defendants based upon your representation to me that these defendants are nonexistent.

Further, plaintiff will not delete Salomon Smith Barney as a defendant herein.

If you have any questions please let me know.

Very truly yours



HENRY M. GRUBEL

cc: Ping Moy, Esq. (U.S. Mail)
David Covey, Esq. (U.S. Mail)

HENRY M. GRUBEL, P.C.
Attorney at Law
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4100 Fax - (516) 623-1989

January 15, 2003

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

Via: Fax only 212-310-8007

Re: LoPresti v. CitiGroup, et.al.
CV-02-6492 (SJ)

Dear Mr. Lender:

On 1/14/03 you told me that I could not get a Rule 4 waiver of service for Copeland Associates, Inc., or Citistreet, Inc., on the grounds that neither of these companies exists.

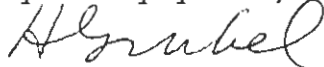
As you know, today is the last day to obtain a waiver of service from the defendants.

The only defendants who have **NOT** provided plaintiff with a waiver of service are Citistreet, Inc., Copeland Associates, Inc., and Salomon Smith Barney.

I have copies of recent checks drawn by Copeland Associates, Inc. that total \$216,304.11.

Please revisit the existence of Copeland Associates, Inc and advise as to Citistreet, Inc and SSB.

Very truly yours,


HENRY M. GRUBEL

cc: Ping Moy, Esq. (Fax only 718-630-6394)
David Covey, Esq. (Fax only 212-422-0925)

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE - NEW YORK, NY 10153-0119

(212) 310-8000

FAX: (212) 310-8007

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MENLO PARK
(SILICON VALLEY)
MIAMI
WASHINGTON, D. C.

BRUSSELS
BUDAPEST
FRANKFURT
LONDON
PRAGUE
WARSAW

DAVID LENDER
DIRECT LINE (212) 310-8153
E-MAIL: david.lender@weil.com

January 16, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, New York 11520

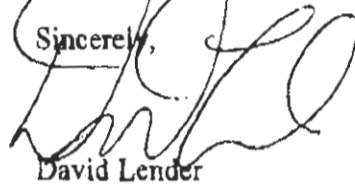
Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grubel:

In response to your January 15, 2003 letter, please be advised once again that Copeland Associates Inc. no longer exists because it merged into Citistreet Associates LLC in August 2000. See attached. In addition, I have checked again, and can confirm that there is no entity called Citistreet, Inc. related to the Citistreet entities named in the Complaint. The document you sent me only indicates that some entity was incorporated as "Citistreet" in 1984 to conduct foreign business, and that the entity is inactive and was terminated. Therefore, I again request that you amend the caption to eliminate these non-existent companies.

Lastly, as I mentioned, Smith Barney Corporate Trust Company has authorized me to accept service on its behalf.

Sincerely,



David Lender

HENRY M. GRUBEL, P.C.
Attorney at Law
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4100 Fax - (516) 623-1989

January 17, 2003

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

Via: Fax only 212-310-8007

Re: LoPresti v. CitiGroup, et.al.
CV-02-6492 (SJ)

Dear Mr. Lender:

Per your 1/16/03 letter you stated "please be advised once again that Copeland Associates, Inc no longer exists because it merged into CitiStreet Associates, LLC in August 2000".

You attached a certificate of conversion of Copeland Associates, Inc. changing its name to Copeland Associates, LLC on 2/25/2000. You also enclosed a certification from the SOS of Delaware of a filing on 8/16/2000 wherein Copeland Associates, LLC had changed its name to CitiStreet Associates, LLC.

Attached hereto is proof positive that Copeland Associates, Inc., does in fact exist, albeit on a defacto basis, notwithstanding its name changes. Enclosed is check # 245266 dated 9/19/02 drawn against BNC Bank National Association, Jennette, P.A., signed by Robert C. Dughi in the amount of \$107,586.48 payable to the order of No. American Co. For Life and Hlth. The upper left portion of the check clearly identifies Copeland Associates, Inc. as the drawer company of the check.

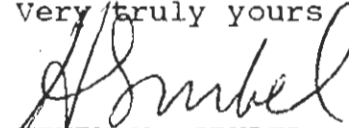
A second check # 246331 dated 10/7/02 in the amount of \$108,717.63 payable and drawn against and made by the same parties identified in the prior check.

In the two years since Copeland changed its name and then merged, it has not made these facts known to its bank or others.

Under the foregoing circumstances I believe that Copeland Associates, Inc. is a properly named defendant herein, whether defacto or dejure, and I renew my request for obtaining a waiver of service ASAP.

I will also need an actual waiver of service from you on the behalf of the defendant Smith Barney Corporate Trust Company because it must be filed with the Court.

Very truly yours



HENRY M. GRUBEL

cc: Allan N. Taffet, Esq. (Fax only 212-883-8883)
David Covey, Esq. (Fax only 212-422-0925)

WEIL, GOTSHAL & MANGES LLP

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WASHINGTON, D.C.

WRITER'S DIRECT LINE
212-310-8704
david.lender@weil.com

February 4, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, NY 11520

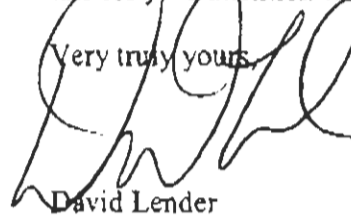
Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grubel:

This is to verify that the following legal entities do not exist: Copeland Associates, Inc. and Citistreet. As set forth in our letter of January 16, 2003, Copeland no longer exists because it merged into Citistreet Associates, LLC in August 2000. Further, "Citistreet" is not a legal entity. It is, therefore, not necessary that you provide a waiver of service and summons with respect to these parties.

Again, we request that you amend the caption and the complaint to eliminate those non-existent companies. Thanks for your attention to this matter.

Very truly yours,



David Lender

HENRY M. GRUBEL, P.C.
Attorney at Law
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4100 Fax - (516) 623-1989

February 5, 2003

BY FACSIMILE ONLY

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

Re: LoPresti v. CitiGroup, et.al..
CV-02-6492 (SJ)
(RML)

Dear Mr. Lender:

In your attached 2/4/03 fax to me you state "this is to verify that the following legal entities do not exist: Copeland Associates, Inc. and Citistreet". You also state "Citistreet" is not a legal entity.

You request that plaintiff amend the caption and the complaint "to eliminate these nonexistent companies".

In view of all of the public evidence that shows Citistreet to be alive and well, it would be appropriate for you to set forth in detail, what the basis is for your verification that Citistreet "is not a legal entity" or that it does not exist.

At this time, under these circumstances, plaintiff will not remove Citistreet or Copeland Associates, Inc., from the caption or the complaint in this matter.

Very truly yours,


HENRY M. GRUBEL

cc: Allan N. Taffet, Esq. (Fax only 212-883-8883)
David Covey, Esq. (Fax only 212-422-0925)

HENRY M. GRUBEL, P.C.
Attorney at Law
37 Prospect Street
P. O. Box 628
Freeport, N. Y. 11520
Phone - (516) 623-4130 Fax - (516) 623-1989

March 19, 2003

Robert C. Heinemann,
Clerk
US District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: CV-02-6492(SJ) (RLM) LoPresti
v. Citigroup, Inc. et al.

Dear Mr. Heinemann:

I represent the plaintiff in the above action. Today I received a copy of a letter dated March 17, 2003, with enclosures, that was sent to Mr. Giokas by David Lender, Esq., an attorney with Weil, Gotshal & Manges. A copy of the letter is enclosed herewith.

On March 13, 2003, I filed a request in Central Islip to have the default of the defendants CITISTREET and COPELAND ASSOCIATES, INC. noted by your office pursuant to Rule 55(a) of the F.R.C.P., for their failure to appear in this action.

Weil, Gotshal & Manges claims in letters to me, and in their letter to Mr. Giokas, that these two defendants do not exist. However, they have deliberately elected not to appear on behalf of these two defendants, so as to litigate or move to have them stricken as named defendants herein on the grounds that they do not exist.

Plaintiff has many reasons to believe that these defendants in fact do exist.

I question counsel's standing to object to my request for you to note a default as to defendants that they do not represent.

In paragraphs 18 and 19 of the plaintiff's Second Amended Complaint, the issue of the existence of CITISTREET is pleaded with specificity. Both defendants were served with the Second Amended Summons and Complaint, and have defaulted in appearing.

Contrary to the statements in the letter to Mr. Giokas, plaintiff did not make a request to enter a 'default judgment'. All plaintiff asked for was that the default of these defendants be noted on your records. A subsequent motion to enter a default judgment can follow only after you have noted the defaults.

Whether there is a "cognizable legal entity entitled 'Citistreet'." cannot be resolved by a mere exchange of letters. Only a full hearing can resolve this issue. The existence of "off the books" companies has been very much in the news of late.

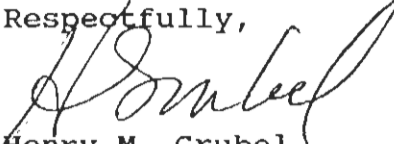
The exhibits attached to the Second Amended Complaint demonstrate that these entities do exist, and they must be estopped from denying it.

The alleged non-existent entity, CITISTREET, asserts on its Website at www.citistreetonline.com, that it employs 3,000 people, has offices throughout the U. S. and overseas, in addition CITISTREET administers retirement plans for over 7.5 million

participants, with over \$200 billion in assets under administration. (See enclosed).

Plaintiff respectfully requests that you note the default in the appearances of the defendants CITISTREET and COPELAND ASSOCIATES, INC., as previously requested.

Respectfully,



Henry M. Grubel

cc: Weil, Gotshal & Manges, LLP
Duval & Stachenfeld, Esqs.
Sedgwick, Detert, Moran & Arnold, Esqs.

HMG:jb

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
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(212) 310-8000
FAX: (212) 310-8007

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WARSAW
WASHINGTON, D.C.

April 29, 2004

DAVID J. LENDER
DIRECT LINE (212) 310-8153
E-MAIL: david.lender@weil.com

BY HAND DELIVERY

The Honorable Viktor V. Pohorelsky
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: **CV-02-64-92, Carmine A. LoPresti v. Citigroup, Inc., et al.**

Dear Judge Pohorelsky:

This law firm represents Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, Citistreet Financial Services LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Citigroup Global Markets Inc. (formerly known as Salomon Smith Barney Inc.), Smith Barney Corporate Trust Company, and Sanford I. Weill and State Street Corporation and David A. Spina in the above referenced matter (the "Defendants"). This letter is written in response to Henry M. Grubel's letter of April 23, 2004 in which Plaintiff's counsel asserts – once again – his frivolous request that the Clerk of the Court enter a default judgment against "Citistreet" and "Copeland Associates, Inc.," two non-existent entities.

As the Court will recall, in a series of letters written by Plaintiff's counsel in early 2003, Plaintiff requested that the Court enter the very same thing that Plaintiff is now requesting: a default judgment against "Citistreet" and "Copeland Associates, Inc." Defendants' counsel responded to Plaintiff's letters and repeatedly explained that "Citistreet" is merely a trade name and not a viable legal entity and the correct name is "Citistreet LLC," a named defendant in this action. Defendants' counsel has also explained on numerous occasions that Copeland Associates, Inc. no longer exists because it merged into Citistreet Associates LLC in August of 2000. Citistreet Associates LLC is also a named defendant. After consideration of the parties' submissions, the Deputy Clerk of the Court – Mr. James Goikas – took no action on Plaintiff's request.

NY1125333091QWM@011.DOC77948.0010

Undeterred, Plaintiff later filed a motion for default judgment against "Citistreet" and "Copeland Associates, Inc." The Defendants filed a response with accompanying proof that neither of the two entities against which Plaintiff sought a default judgment were viable legal entities. See Defendants' Response to Plaintiff's Motion for Default Judgment Against "Copeland Associates, Inc." and "Citistreet," the Affidavit of Robert C. Dughi, and the Affidavit of David Lender, collectively attached hereto as Exhibit A. On July 7, 2003, the Court held a hearing on Plaintiff's motion. See Transcript of Hearing on Plaintiff's Motion for Default Judgment before The Honorable Viktor V. Pohorelsky dated July 7, 2003 ("Transcript") attached hereto as Exhibit B. At outset of the hearing, the Court made the following poignant observations with respect to Plaintiffs' motion for default judgment:

The defendants, it seems to me, have made a pretty convincing factual showing that . . . there is no Citistreet, regardless of what the advertisements may say. At the very least, it is a factual dispute which you would need to have discovery on.

Then Copeland Associates, Inc. - - there seems to be a clear line of facts showing that Copeland Associates, Inc. was merged into another company and it doesn't exist. So I don't understand why you are going through this rigmarole.

* * *

I have the distinct impression that you are just playing games, Mr. Grubel. It just doesn't make sense to me that you're spending this kind of effort going after [the non-existent entities] - - you have Citistreet LLP.

See Exhibit B (Transcript at 2-3; 5).

Crucially, at the hearing, the Defendants directed the Court's attention to their pending motion to dismiss the above-captioned matter pursuant to Fed. R. Civ. P. 12(b)(6), (see id. at 9), which, as the Court acknowledged, could very well moot the issues raised by Plaintiff's motion for default judgment. See id. at 12. Accordingly, at the conclusion of the hearing, giving Plaintiff the benefit of the doubt, the Court reserved a ruling on Plaintiff's motion for default judgment until *after* the Court issues a ruling on Defendants' pending 12(b)(6) motion. See id. As of the date of Plaintiff's most recent request for a default judgment - April 23, 2004 - Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is still pending.

Moreover, as the Court acknowledged, consideration as to whether or not to enter a default judgment in this instance is not a "ministerial" act (as Plaintiff has alleged) and would likely require a full blown evidentiary hearing. See id. Accordingly, consistent with the Court's previous ruling on the issue, Defendants respectfully request that the Court deny Plaintiff's demand of April 23, 2004 that the Court enter a default judgment against the non-existent entities, "Citistreet" and "Copeland Associates, Inc."

Respectfully submitted,

David Lender / *with permission*

David Lender

cc: The Honorable Sterling Johnson, Jr. (By Hand Delivery)
Robert C. Heinemann (By Hand Delivery)
James Goikas (By Hand Delivery)
Henry Grubel, Esq. (By First Class Mail)
Kimberly S. Penner, Esq. (By First Class Mail)
Michael H. Ference, Esq. (By First Class Mail)

LAW OFFICE OF
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4130 Fax - (516) 623-1989

May 5, 2004

Robert C. Heinemann,
Clerk of Court
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: CV-02-6492(SJ)(VVP)
LoPresti v. Citigroup, Inc. et al.

Dear Mr. Heinemann:

I wish to address and expand upon some issues arising out of the letter sent to Magistrate Judge Pohorelsky dated April 29, 2004, by Weil, Gotshal and Manges. It was sent by them to him rather than to you, in opposition to my letter addressed to you dated April 24, 2004. To avoid triangulation I am addressing this letter to you, as the person charged with noting defaults by the F.R.C.P.

Contrary to the assertions contained in their letter to the Magistrate and the numerous attachments thereto, (which included a copy of the July 7, 2003 transcript and the prior Weil Gotshal & Manges submissions to the court, excluding any submissions by the plaintiff), plaintiff has not requested that you enter a default judgment against the defendants Citistreet and Copeland Associates, Inc. All plaintiff has requested you do is to note the default on the Court's Docket of these defendants, pursuant to F.R.C.P. 55(a), which reads as follows:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

It is respectfully submitted that this is a ministerial act to be performed by you, and that plaintiff has met the prerequisites thereof.

A default judgment herein can only be entered under F.R.C.P. 55 (b)(2) upon application to the Court, if you have first noted the default on the docket.

As to the hearing held on plaintiff's motion for a default judgment on July 7, 2003 before Magistrate Judge Pohorelsky, a reading of the transcript reveals that though it was denominated as being a hearing in his order of May 28, 2003, it was nothing of the sort.

No testimony was taken, no exhibits were admitted, no one was sworn, proper argument was foreclosed, it was very short, adjourned *sine die*, and the transcript itself denominated it as having been merely a status conference. It should be noted that to this date, this case has never been conferenced.

Incredibly, the Magistrate's *ad hominem* attack on the record against me and my client that 'you are just playing games, Mr. Grubel', was made at page 5 line 14 of the transcript of the proceeding, just after I had told the Magistrate that the Citistreet web site showed that Citistreet had:

eight hundred million under management and they employ 3,000 people and they have offices all over the U.S. and they are the largest---
(page 5 line 10 of transcript).

Predictably Weil, Gotshal and Manges repeats and circulates this injudicious, inflammatory and prejudicial 'playing games' canard in their letter to the Magistrate.

Plaintiff was not allowed to put in any proof of the existence of Citistreet and Copeland Associates, Inc.

Plaintiff was never told that the previously ordered hearing had somehow been converted into a status conference. Plaintiff was prepared to present his proof, and issued a number of third party subpoenas duces tecum in anticipation of having the hearing that never took place.

Much of plaintiff's proof regarding the existence of Citistreet, is contained in the website belonging to the allegedly non-existent entity known as Citistreet, to wit;
www.citistreetonline.com.

In connection with the impact and effect of the contents of a party's website on litigation, I am enclosing herewith a copy of a decision dated April 12, 2004, that, in relevant part, collects and cites several Federal and State cases regarding the effect of the contents of a party's website, on its taking a position contrary to that which it has posted on its website, in a legal proceeding. N.Y.C. Medical v. Republic Western Ins. Co (Civil

Further, the co-defendant Lutheran Medical Center has averred by counsel in paragraph C on page five of its motion under F.R.C.P. 12(b)(6), that Citistreet is a joint venture, and it was stated by Lutheran Medical Center in an announcement to its employees that Citistreet is a joint venture. Said announcement was attached as Exhibit 'D' to plaintiff's second amended complaint, it read in pertinent part as follows:

CitiStreet is a joint venture between CitiGroup and State Street, two of the largest, most well respected financial companies in the country.

None of the co-defendants herein opposed the granting of plaintiff's motion for a default judgment against Citistreet and Copeland Associates, Inc. They were not present at the July 7, 2003 hearing. The last sentence of Magistrate Pohorelsky's order dated May 28, 2003, directed that:

Only counsel for the movant and for the parties opposing the motion are required to attend. (Emphasis supplied)

In addition none of the co-defendants filed papers in opposition to plaintiff's motion for a default judgment against Citistreet and Copeland Associates, Inc.

I was unaware of the fact that plaintiff's request, that you note the subject defaults, was, according to Mr. Lender, already considered and decided by the Chief Deputy Clerk, Mr. Giokas, and not by you. In any event, I was never notified of his decision, nor have I seen any mention thereof on the Court's Docket.

Plaintiff also is not privy to what 'the Court's previous ruling on the issue', concerns. It is referred to by Mr. Lender, in the closing paragraph of his letter to the Magistrate.

Plaintiff takes issue with the proposition that if the Court grants the pending F.R.C.P. 12(b)(6) motions by the answering defendants, that this will ipso-facto relieve the defaulted defendants from their default, or render their default to be moot.

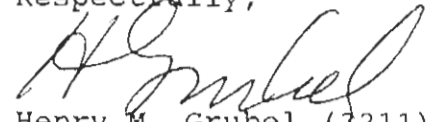
Weil, Gotshal and Manges, has deliberately not appeared on behalf of the deliberately defaulted defendants, yet they are representing them as if they have legal standing to do so, and in the process they are misleading the Court regarding the existence of the defaulted defendants.

In view of the manner in which the letter to the Magistrate was signed, I spoke to Mr. Lender on May 3, 2004. He told me that

he stands by everything contained therein. In a prior inquiry to an associate of his, Mr. Hageman I was refused the identity of the person who actually signed the letter.

Plaintiff renews his request that you note the defaults of the defendants Citistreet and Copeland Associates, Inc. on the Docket of the Court.

Respectfully,



Henry M. Grubel (3211)
Attorney for Plaintiff

cc: Hon. Judge Sterling Johnson, Jr.
Hon. Magistrate Judge Viktor V. Pohorelsky
David Lender, Esq., Weil, Gotshal & Manges, LLP
Michael Ference, Esq, Sichenzia, Ross, Friedman, Ference, LLP
David Covey, Esq., Sedgwick, Detert, Moran & Arnold, Esqs.

EXHIBIT 'E'

UNITED STATES DISTRICT COURT

ROBERT C. HEINEMANN
CLERK
JAMES GIOKAS
CHIEF DEPUTY

EASTERN DISTRICT OF NEW YORK

PLEASE REPLY TO:
BROOKLYN OFFICE
U.S. COURTHOUSE
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201
 LONG ISLAND OFFICE
UNITED STATES DISTRICT COURT
100 FEDERAL PLAZA
CENTRAL ISLIP, NEW YORK
11722-4438

May 7, 2004

Henry M. Grubel, Esq.
Law Office of Henry M. Grubel, P.C.
37 Prospect Street
Freeport, NY 11520

Re: 02-CV-6496 (SJ) (VVP)
Lo Presti v. Citigroup, Inc., et al.

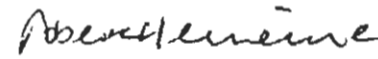
Dear Mr. Grubel:

I have received your letter of May 5, 2004, and understand your renewed request.

I am aware of the distinction between a notation of default, as opposed to the entry of a default judgment. However, even a ministerial act is not taken in a vacuum, separate from a factual dispute between counsel in the underlying action. Under all of the circumstances here, as explained in your letter and as previously indicated on the record, I do not agree that the entry of a Rule 55(a) notation of default against Citistreet and Copeland Associates, Inc. by the Clerk's Office is required at this time.

A copy of this reply will be docketed.

Sincerely yours,



Robert C. Heinemann
Clerk of Court

cc: Hon. Sterling Johnson, Jr., United States District Judge
Hon. Viktor V. Pohorelsky, United States Magistrate Judge
David Lender, Esq.
Michael Ference, Esq.
David Covey, Esq.

EXHIBIT 'F'

**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:02-cv-06492-SJ-VVP**

LoPresti v. Citigroup, Inc. et al
Assigned to: Judge Sterling Johnson Jr.
Referred to: Magistrate-Judge Viktor V. Pohorelsky
Demand: \$100000000
Cause: 29:1132 E.R.I.S.A.-Employee Benefits

Date Filed: 12/11/2002
Jury Demand: Plaintiff
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

**Carmine A. LoPresti, Individually,
and in his fiduciary capacity under the
Employee Retirement Income Security
Act of 1974, under the Lutheran
Medical Center S 403(b) Tax Sheltered
Annuity Plan**

represented by **Henry Michael Grubel**
Henry M. Grubel, P.C.
37 Prospect Street
Freeport, NY 11520
516-623-4100
Fax: 516-623-1989
Email: Recallit@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Citigroup, Inc.

represented by **David J. Lender**
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153
212-310-8000
Fax: 212-310-8007
Email: david.lender@weil.com
ATTORNEY TO BE NOTICED

Wendy Z. Goldstein

represented by **Michael H. Ference**
Sichenzia Ross Friedman Ference LLP
1065 Avenue of the Americas
21st floor
New York, NY 10018
212-930-9700
Fax: 212-930-9725
Email: mference@srflp.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Miles H. Kucker

represented by **Michael H. Ference**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Allen Schechter represented by **Michael H. Ference**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Howard Smith represented by **Michael H. Ference**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William D. Myhre represented by **Michael H. Ference**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Don Goldstein represented by **David J. Lender**
(See above for address)
ATTORNEY TO BE NOTICED

State Street Corporation represented by **David J. Lender**
(See above for address)
ATTORNEY TO BE NOTICED

Citistreet

Citistreet Incorporated

Citistreet Associates, LLC represented by **David J. Lender**
(See above for address)
ATTORNEY TO BE NOTICED

Citistreet Equities, LLC represented by **David J. Lender**
(See above for address)
ATTORNEY TO BE NOTICED

Citistreet Financial Services, LLC represented by **David J. Lender**
(See above for address)
ATTORNEY TO BE NOTICED

Travelers Insurance Company represented by **David J. Lender**
(See above for address)
ATTORNEY TO BE NOTICED

Lutheran Medical Center, represented by **Michael H. Ference**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Buck Consultants represented by **Kimberly S. Penner**
McCarter & English, LLP

245 Park Avenue
 New York, NY 10167
 (212) 609-6800
 Fax: (212) 609-6921
 Email: kimberly.penner@sdma.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Buck Consultants, Inc. represented by **Kimberly S. Penner**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mayda Casado represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Jean Desjardins represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Jim Wilson represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Smith Barney Corporate Trust Company, (s/h/a Salomon Smith Barney, Inc.) represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Copeland Associates, Inc., individually, and in their fiduciary capacities, under Employee Retirement Income Security Act of 1974

David A. Spina represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Sanford I. Weill represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Salomon Smith Barney, Inc. represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Citistreet LLC represented by **David J. Lender**
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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12/11/2002	1	COMPLAINT against Buck Consultants, Buck Consultants, Inc., Mayda Casado, Citigroup, Inc., Citistreet, Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet Incorporated, Copeland Associates, Inc., Jean Desjardins, Don Goldstein, Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center,, William D. Myhre, Allen Schechter, Howard Smith, Smith Barney Corporate Trust Company, State Street Corporation, Travelers Insurance Company, Jim Wilson (Filing fee receipt number 8131.), filed by Carmine A. LoPresti. (Attachments: # 1 Civil Cover Sheet) (Bowens, Priscilla) (Entered: 12/12/2002)
12/23/2002	2	Letter from Henry M. Grubel, Esq. to Judge Johnson dated 12/17/02 enclosing printouts of the statutes, and regulations cited in the complaint. Also enclosed is a hard copy of the complaint and extra copy of the exhibits. (enclosures attached). (Fernandez, Erica) (Entered: 12/23/2002)
12/30/2002	4	Consent to Electronic Case Filing, by counsel for the plaintiff. (Sica, Michele) (Entered: 01/24/2003)
01/06/2003	3	COMPLAINT against all defendants (Filing fee receipt number 008131.) Summons Issued, filed by Carmine A. LoPresti.(Grubel, Henry) (Entered: 01/06/2003)
01/24/2003	5	AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND FOR DAMAGES against Buck Consultants, Buck Consultants, Inc., Mayda Casado, Citigroup, Inc., Citistreet, Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet Incorporated, Copeland Associates, Inc., Jean Desjardins, Don Goldstein, Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center,, William D. Myhre, Allen Schechter, Howard Smith, Smith Barney Corporate Trust Company, State Street Corporation, Travelers Insurance Company, Jim Wilson , filed by Carmine A. LoPresti.(Fernandez, Erica) (Entered: 02/03/2003)
01/24/2003	6	WAIVER OF SERVICE Returned Executed by Citistreet Associates, LLC. waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/05/2003)
01/24/2003	7	WAIVER OF SERVICE Returned Executed by Travelers Insurance Company. Waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/06/2003)
01/24/2003	8	WAIVER OF SERVICE Returned Executed by Miles H. Kucker. Waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/06/2003)

01/24/2003	9	WAIVER OF SERVICE Returned Executed by Don Goldstein. Waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/06/2003)
01/24/2003	10	WAIVER OF SERVICE Returned Executed by Mayda Casado. Waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/06/2003)
01/24/2003	11	WAIVER OF SERVICE Returned Executed by Jean Desjardins. Waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/06/2003)
01/24/2003	12	WAIVER OF SERVICE Returned Executed by Buck Consultants, Inc.. Waiver sent on 12/16/2002, answer due 2/14/2003. (Fernandez, Erica) (Entered: 02/06/2003)
01/24/2003	13	WAIVER OF SERVICE Returned Executed by State Street Corporation. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	14	WAIVER OF SERVICE Returned Executed by Buck Consultants. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	15	WAIVER OF SERVICE Returned Executed by Howard Smith. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	16	WAIVER OF SERVICE Returned Executed by Lutheran Medical Center,. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	17	WAIVER OF SERVICE Returned Executed by Wendy Z. Goldstein. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	18	WAIVER OF SERVICE Returned Executed by Allen Schechter. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	19	WAIVER OF SERVICE Returned Executed by William D. Myhre. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	20	WAIVER OF SERVICE Returned Executed by Citigroup, Inc.. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)

01/24/2003	21	WAIVER OF SERVICE Returned Executed by Smith Barney Corporate Trust Company. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	22	WAIVER OF SERVICE Returned Executed by Jim Wilson. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	23	WAIVER OF SERVICE Returned Executed by Citistreet Equities, LLC. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	24	WAIVER OF SERVICE Returned Executed by Citistreet Financial Services, LLC. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
01/24/2003	25	WAIVER OF SERVICE Returned Executed by Citistreet. Waiver sent on 12/16/2002, answer due 2/14/2003. (Sica, Michele) (Entered: 02/06/2003)
02/12/2003	26	Interoffice Memorandum dated Feb. 12, 2003 from M.J. Levy recusing himself from this case. (Vaughn, Terry) (Entered: 02/12/2003)
02/13/2003		Mag. Judge Roanne L. Mann added. Mag. Judge Robert M. Levy no longer assigned to case. Chambers advised by e'mail. (Vaughn, Terry) (Entered: 02/13/2003)
02/18/2003		Mag. Judge Roanne L. Mann has recused herself and is no longer assigned to case. Mag. Judge Cheryl L. Pollak added. Chambers notified by e'mail. (Vaughn, Terry) (Entered: 02/18/2003)
02/20/2003	29	AFFIDAVIT of Service for Summons and Amended Complaint served on CitiStreet on 02/05/03, filed by Carmine A. LoPresti. (Sica, Michele) (Entered: 02/25/2003)
02/20/2003	30	AFFIDAVIT of Service for Summons and Complaint served on Copeland Assoc. N/K/A CitiStreet on 02/07/03. filed by Carmine A. LoPresti. (Sica, Michele) (Entered: 02/25/2003)
02/21/2003	27	STIPULATION AND ORDER directing that Defts shall have until 3/14/03 to answer or otherwise plead in response to Pltf's Amended Complaint, filed and served on all counsel on 1/24/03; It is further stipulated and agreed that the undersigned defts and their attorneys will not contest the service of Pltf's complaint and amended complaint. Signed by counsel for parties and so ordered by Judge Sterling Johnson Jr. on 2/5/03. (Fernandez, Erica) (Entered: 02/21/2003)

		02/21/2003)
02/24/2003	28	AMENDED COMPLAINT <i>2nd Amended Complaint</i> against all defendants, filed by Carmine A. LoPresti.(Grubel, Henry) (Entered: 02/24/2003)
03/11/2003	31	AFFIDAVIT of Service for Second AMended Summons & Complaint served on Citistreet as a Corporation on 02/24/03, filed by Carmine A. LoPresti. (Sica, Michele) (Entered: 03/13/2003)
03/11/2003	32	AFFIDAVIT of Service for 2nd Amended Summons & Complaint served on David Spina on 02/24/03, filed by Carmine A. LoPresti. (Sica, Michele) (Entered: 03/13/2003)
03/11/2003	33	AFFIDAVIT of Service for Summons & Complaint served on Copeland Associates n/k/a Citi Street on 02/25/03, filed by Carmine A. LoPresti. (Sica, Michele) (Entered: 03/13/2003)
03/11/2003	34	AFFIDAVIT of Service for Summons & Complaint served on Sanford I. Weill on 02/24/03, filed by Carmine A. LoPresti. (Sica, Michele) (Entered: 03/14/2003)
04/18/2003	36	Letter dtd 04/10/03 from David Lender to August Marzilliano, writing to provide an explanation as to the reasons for the numerous joint stipulations filed by the parties agreeing to extend the date on which the defendants are required to answer or otherwise move against the plaintiffs' complaint (Sica, Michele) (Entered: 04/22/2003)
04/21/2003	35	ENDORSED ORDER, The request for a 5 page extention on Judge Johnson's twenty page limitation is GRANTED . Signed by Judge Sterling Johnson Jr. on 04/03/03. (Sica, Michele) (Entered: 04/21/2003)
04/22/2003	38	STIPULATION AND ORDER by and among the attorneys for Defendants and Plaintiff, the Defendant shall have until 03/28/03 to answer or otherwise plead in response to Plaintiff's second amended complaint, filed and served on all counsel on 02/21/03.. Signed by Judge Sterling Johnson Jr. on 03/11/03. (Sica, Michele) (Entered: 04/29/2003)
04/23/2003		Case reassigned to Judge Viktor V. Pohorelsky. Judge Cheryl L. Pollak no longer assigned to the case. Parties notified. (Bowens, Priscilla) (Entered: 04/28/2003)
04/24/2003	37	Letter dated 4/21/03 from Henry M. Grubel to Counsel enclosing a motion for an order for entry of a final judgment against the dft Citistreet, and referral of this matter to a jury for the sole purpose of

		assessing damages, and for a default judgment as against the dft Copeland Associates, Inc. (Noh, Kenneth) (Entered: 04/24/2003)
04/29/2003	39	STIPULATION by and among the attorneys for defendants and attorneys for Plaintiffs, that defendant shall have until 04/11/03 to answer or otherwise plead in response to plaintiff's second amended complaint, filed and served on all counsel on 02/21/03 filed by Citigroup, Inc., State Street Corporation. (Sica, Michele) (Entered: 04/29/2003)
04/29/2003	50	MOTION to Dismiss <i>all claims against Buck Consultants, Inc. d/b/a Buck Consultants (supporting papers attached)</i> by Buck Consultants, Buck Consultants, Inc.. (Fernandez, Erica) (Entered: 05/19/2003)
04/30/2003	40	Letter dated 4/22/03 from Henry M. Grubel to David Lender, Michael Ference and David Covey enclosing the electronic form of the motion for a final judgment against the defendant Citistreet and a default judgment against Copeland Associates, Inc. (Black, Amanda) (Entered: 04/30/2003)
05/01/2003	41	STANDARD REFERRAL ORDER: The civil case here in above set forth is referred to Mag. Pohorelsky for the following pretrial purpose: Motion for default judgment as to defts. Signed by Judge Sterling Johnson Jr. on 4/23/03. (Fernandez, Erica) (Entered: 05/01/2003)
05/01/2003	43	Letter from Henry M. Grubel to Counselors dated 4/22/03 enclosing the electronic form of the motion for a final judgment against deft Citistreet and a default judgment against Copeland Associates. (enclosures not attached (Fernandez, Erica) (Entered: 05/02/2003)
05/02/2003	42	Letter dated 4/28/2003 from Michael H. Ference to Counsel enclosing a copy of LMC defts' Notice of Motion and Memorandum of law in Support of their Motion to Dismiss the Second Amended Complaint. (w/o encl.)(Barrett, Charryse) (Entered: 05/02/2003)
05/05/2003	44	STIPULATION AND ORDER by and among attorney's for defendant's, the defendant's shall have until 04/28/03 to answer or otherwise plead or move to respond to plaintiff's second amended complaint, filed and served on all counsel on 02/21/03. Signed by Judge Sterling Johnson Jr. on 04/10/03. (Sica, Michele) (Entered: 05/05/2003)
05/06/2003	45	Letter dtd 04/30/03 from Michael H. Ference to Counsel. enclosing a copy of the LMC defendants' Rule 7.1 statement. (enclosure not attached). (Sica, Michele) (Entered: 05/06/2003)

05/06/2003	46	Letter from Henry M. Grubel to Counselors. enclosing Plaintiff's notice of motion for an order under FRCP 54 for an order of entry of final judgment. (enclosure not attached). (Sica, Michele) (Entered: 05/06/2003)
05/07/2003	47	STANDARD REFERRAL ORDER (rec'd for docketing 5/7/03) referring to Mag Mann the request to enter default as against Citistreet and Copeland. Signed by Judge Sterling Johnson Jr. on 4/16/03. (Fernandez, Erica) (Entered: 05/07/2003)
05/13/2003	48	Letter from David Lender to Judge Johnson Regarding Judge Johnson's rules,the submission of this cover letter and are concurrently serving upon Plaintiff and our Co-defendant, Defendant's Memorandum of Law in Support of Opposition to plaintiff's Motion for Default Judgment Against "Copeland Associates" and citistreet. (Sica, Michele) (Entered: 05/13/2003)
05/14/2003	49	Letter from David Lcnder to Judge Johnson Regarding the submission of Defendant's Memo of Law in Support of Opposition to Plaintiff's Motion for default. as per Judge Johnson's rules. (Sica, Michele) (Entered: 05/14/2003)
05/19/2003	51	Letter dtd 05/05/03 from Henry M. Grubel to Judge Pohorelsky .requesting the Magistrate Pohorelsky recuse himself as the Magistrate in this case. (Sica, Michele) (Entered: 05/19/2003)
05/21/2003	52	ORDER: Decision By letter dtd 05/05/03, the plaintiff's counsel has informally requested a recusal in this action to avoid an appearance of bias or impartiality. . Signed by Judge Viktor V. Pohorelsky on 05/16/03. (Sica, Michele) (Entered: 05/21/2003)
05/22/2003	53	MOTION for Default Judgment as to <i>Citistreet & Copeland Assoc</i> by Carmine A. LoPresti. (Attachments: # 1 mot for def judgmt# 2 P's aff in support# 3 p's memo of law# 4 trans ltr to defs# 5 tran ltr to judge johnson# 6 P's reply affid# 7 cert of service of reply# 8 p's supplemental reply# 9 proposed order# 10 P's ltr to Judge re supp reply)(Grubel, Henry) (Entered: 05/22/2003)
05/22/2003	54	MOTION for Default Judgment as to <i>Citistreet & Copeland Assoc.</i> by Carmine A. LoPresti. (Attachments: # 1 Dughi aff in opposition# 2 memo of law in opposition# 3 wgm trans ltr to judge# 4 wgm trans ltr to mag)(Grubel, Henry) (Entered: 05/22/2003)
05/23/2003	55	MOTION for Default Judgment as to <i>Citistreet & Copeland Assoc. Inc.</i> by Carmine A. LoPresti. (Attachments: # 1 Part-2 P's Exhibits to Mot for default judgment# 2 Part -3 P's Exhibits to Motion for Default Judgment# 3 Part-4 P's Exhibits to mot for default judgment# 4 Part-1 Exhibits to P's reply papers# 5 Part-2 Exhibits to P's reply

		papers# 6 Part-3 Exhibits to P's Reply papers# 7 P's exhibits to supplemental reply)(Grubel, Henry) (Entered: 05/23/2003)
05/27/2003	56	Letter dtd 04/02/03 from Kimberly S. Penner to August Marzilliano. Buck Consulatat, hereby joins in our co-defendants' request, by letter dtd 04/01/03, of a five page extention on Judge Johnson's twenty (20) page limitation on Memorandum of Law. (Sica, Michele) (Entered: 05/27/2003)
05/27/2003	57	Letter dtd 04/29/03 from Kimberly S. Penner to Judge Johnson & Magistrate Pollak. Notifying the court that on 04/28/03 a Notice of motion and supporting documents were served on the Plaintiff's and Co-Defendant's. Enclosures not attached. (Sica, Michele) (Entered: 05/27/2003)
05/30/2003	58	ORDER: The pltf's motion for a default judgment against Citistreet and Copeland Associates, Inc. has been referred to Mag for a report and recommendation. A hearing on the motion will be held on 7/7/03 at 10:30 AM. Counsel are directed to report to Room 571 at EDNY. Signed by Judge Viktor V. Pohorelsky on 5/28/03. c/m by chambers (Fernandez, Erica) (Entered: 05/30/2003)
06/26/2003	59	STIPULATION AND ORDER, by the parties that Sichenzia RossFriedman Ference LLP should be substituted as counsel of record for the parties in place of Duval & Stachenfeld LLP. Signed by Judge Sterling Johnson Jr. on 03/15/03. (Sica, Michele) (Entered: 06/26/2003)
07/07/2003	60	Minute Entry for proceedings held before Viktor V. Pohorelsky : for a Civil Conference held on 7/7/2003. Purpose of Conference: Hearing on Default Motion. Counsel for all sides present. The next conference is adjourned sine die. Argument held; rulings reserved. (Sica, Michele) (Entered: 07/10/2003)
07/14/2003	61	Letter from Henry M. Grubel, Esq. to Mag Pohorelsky requesting a copy of the recording of the proceeding held at 10:30 AM on 7/7/03 in Courtroom 521. (Fernandez, Erica) (Entered: 07/14/2003)
07/22/2003	62	TRANSCRIPT of Civil Cause for Status Conference held on 07/07/03 before Judge Pohorelsky. Court Reporter: ESR. Appearances for Plaintiff: Henry Grubel, Esq. For Deft.: David Lender, Esq. (Sica, Michele) (Entered: 07/24/2003)
07/30/2003	63	Letter dtd 07/14/03 from Henry M. Grubel to Counsel enclosing the plaintiff's oppositions to 12(b) (1) & (6) motions to dismiss in PDF format on a CD. (Enclosures not attached). (Sica, Michele) (Entered: 07/30/2003)

08/18/2003	<u>64</u>	Notice of MOTION to Dismiss <i>Second Amended Complaint</i> by Don Goldstein, David A. Spina, Sanford I. Weill, Salomon Smith Barney, Inc., Citistreet LLC, Mayda Casado, Citigroup, Inc., Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Jean Desjardins, Smith Barney Corporate Trust Company, State Street Corporation, Travelers Insurance Company, Jim Wilson. (Lender, David) (Entered: 08/18/2003)
08/18/2003	<u>65</u>	CERTIFICATE OF SERVICE by Mayda Casado, Citigroup, Inc., Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet LLC, Jean Desjardins, Don Goldstein, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, David A. Spina, State Street Corporation, Travelers Insurance Company, Sanford I. Weill, Jim Wilson re <u>64</u> Notice of MOTION to Dismiss <i>Second Amended Complaint and Memorandum of Law in Support</i> (Lender, David) (Entered: 08/18/2003)
08/18/2003	<u>66</u>	RESPONSE in Opposition re <u>64</u> Notice of MOTION to Dismiss <i>Second Amended Complaint</i> filed by Carmine A. LoPresti. (Lender, David) (Entered: 08/18/2003)
08/18/2003	<u>67</u>	REPLY to Response to Motion re <u>64</u> Notice of MOTION to Dismiss <i>Second Amended Complaint</i> filed by Mayda Casado, Citigroup, Inc., Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet LLC, Jean Desjardins, Don Goldstein, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, David A. Spina, State Street Corporation, Travelers Insurance Company, Sanford I. Weill, Jim Wilson. (Lender, David) (Entered: 08/18/2003)
08/18/2003	<u>68</u>	CERTIFICATE OF SERVICE by Mayda Casado, Citigroup, Inc., Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet LLC, Jean Desjardins, Don Goldstein, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, David A. Spina, State Street Corporation, Travelers Insurance Company, Sanford I. Weill, Jim Wilson re <u>64</u> Notice of MOTION to Dismiss <i>Second Amended Complaint and Reply Memorandum</i> (Lender, David) (Entered: 08/18/2003)
08/18/2003	<u>69</u>	Notice of MOTION to Dismiss <i>Second Amended Complaint</i> by Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center,, William D. Myhre, Allen Schechter, Howard Smith. (FERENCE, Michael) (Entered: 08/18/2003)
08/18/2003	<u>70</u>	MOTION to Dismiss <i>Second Amended Complaint and Memorandum of Law</i> by Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center,, William D. Myhre, Allen Schechter, Howard Smith. (FERENCE, Michael) (Entered: 08/18/2003)

08/18/2003	71	RESPONSE in Opposition re 69 Notice of MOTION to Dismiss <i>Second Amended Complaint</i> , 70 MOTION to Dismiss <i>Second Amended Complaint and Memorandum of Law</i> filed by Carmine A. LoPresti. (FERENCE, Michael) (Entered: 08/18/2003)
08/18/2003	72	REPLY to Response to Motion re 69 Notice of MOTION to Dismiss <i>Second Amended Complaint</i> , 70 MOTION to Dismiss <i>Second Amended Complaint and Memorandum of Law</i> filed by Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center., William D. Myhre, Allen Schechter, Howard Smith. (FERENCE, Michael) (Entered: 08/18/2003)
08/18/2003	73	MOTION to Dismiss <i>Affidavit of Service</i> by Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center., William D. Myhre, Allen Schechter, Howard Smith. (FERENCE, Michael) (Entered: 08/18/2003)
08/18/2003	74	AFFIDAVIT of Service for Reply Memorandum In Support of Motion to Dismiss served on Plaintiff and other Defendants on 08/18/03, filed by Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center., William D. Myhre, Allen Schechter, Howard Smith. (FERENCE, Michael) (Entered: 08/18/2003)
08/18/2003	75	CERTIFICATE of Counsel <i>Rule 7.1 Statement</i> by Michael H. FERENCE on behalf of Wendy Z. Goldstein, Miles H. Kucker, Lutheran Medical Center., William D. Myhre, Allen Schechter, Howard Smith (FERENCE, Michael) (Entered: 08/18/2003)
08/18/2003	76	RESPONSE in Support re 64 Notice of MOTION to Dismiss <i>Second Amended Complaint</i> filed by Mayda Casado, Citigroup, Inc., Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet Incorporated, Citistreet LLC, Jean Desjardins, Don Goldstein, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, David A. Spina, State Street Corporation, Travelers Insurance Company, Sanford I. Weill. (Attachments: # 1 # 2)(Lender, David) (Entered: 08/18/2003)
08/18/2003	77	CERTIFICATE OF SERVICE by Mayda Casado, Citigroup, Inc., Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Citistreet LLC, Jean Desjardins, Don Goldstein, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, David A. Spina, State Street Corporation, Travelers Insurance Company, Sanford I. Weill, Jim Wilson re 76 Response in Support of Motion, (Lender, David) (Entered: 08/18/2003)
08/20/2003	78	MOTION to Dismiss by Buck Consultants, Buck Consultants, Inc. (Affidavit of Kimberly S. Penner, Esq. and Memorandum of Law in Support of Motion attached) (Fernandez, Erica) (Entered: 08/20/2003)

		09/08/2003)
08/20/2003	79	Memorandum of Law in Opposition [78] MOTION to Dismiss filed by Carmine A. LoPresti. (Fernandez, Erica) (Entered: 09/08/2003)
08/20/2003	80	REPLY MEMORANDUM OF LAW in Support of [78] MOTION to Dismiss filed by Buck Consultants, Buck Consultants, Inc. (Fernandez, Erica) (Entered: 09/08/2003)
04/29/2004	81	Letter from Henry M. Grubel, Esq. to Robert C. Heinemann, Clerk of Court dated 4/23/04 renewing request that the default is noted in the appearances of the defts Citistreet and Copeland Associates, Inc. (fwd to Judge Johnson's chambers) (Fernandez, Erica) (Entered: 04/29/2004)
04/30/2004	82	Letter from David Lender, Esq. to Mag. Pohorelsky dated 4/29/04 requesting that the Court deny Pltf's demand of 4/23/04 that the Court enter a default judgment against the non-existent entities, Citistreet and Copeland Associates, Inc. (fwd to Mag Pohorelsky's chambers) (Fernandez, Erica) (Entered: 04/30/2004)
05/13/2004	83	Letter from Henry M. Grubel, Esq. to Robert Heinemann, Clerk of Court dated 5/5/04 requesting that the defaults of the defts Citistreet and Copeland Associates Inc. is noted on the docket. (Fernandez, Erica) (Entered: 05/13/2004)
06/17/2004	84	SCHEDULING ORDER: Scheduling hearing on plaintiffs' motion to disqualify the magistrate judge for July 16, 2004 at 2:30 p.m.. Signed by Judge Viktor V. Pohorelsky on 06/17/2004. (Pohorelsky, Viktor) (Entered: 06/17/2004)
06/23/2004	85	Letter from Henry M. Grubel, Esq. to Judge Johnson enclosing a decision of the US Court of Appeals for the Second Circuit dated 3/1/04. (enclosure attached) (Fernandez, Erica) (Entered: 06/23/2004)
06/24/2004	88	Letter dated 6/22/04 from Henry M. Grubel, Esq. to USMJ Pohorelsky, requesting clarification of USMJ Pohorelsky's order dated 6/17/04. (Nieves, Adrian) (Entered: 06/28/2004)
06/25/2004	86	MEMORANDUM concerning the scope of the hearing scheduled for the plaintiff's motion to disqualify the magistrate judge. Signed by Judge Viktor V. Pohorelsky on 06/25/2004. (Pohorelsky, Viktor) (Entered: 06/25/2004)
06/25/2004	87	MOTION to Disqualify Judge <i>Viktor V. Pohorelsky</i> by Carmine A. LoPresti. (Grubel, Henry) (Entered: 06/25/2004)

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**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:02-cv-06492-SJ-VVP**

LoPresti v. Citigroup, Inc. et al
Assigned to: Judge Sterling Johnson Jr.
Referred to: Magistrate-Judge Viktor V. Pohorelsky
Demand: \$100000000
Cause: 29:1132 E.R.I.S.A.-Employee Benefits

Date Filed: 12/11/2002
Jury Demand: Plaintiff
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/24/2004	88	Letter dated 6/22/04 from Henry M. Grubel, Esq. to USMJ Pohorelsky, requesting clarification of USMJ Pohorelsky's order dated 6/17/04. (Nieves, Adrian) (Entered: 06/28/2004)
06/24/2004	89	ENDORSED ORDER: The Court will not accept this motion because: (1) it was not submitted as a fully briefed motion, per Judge Johnson's individual rules, (2) it was not electronically filed, and (3) The Court did not receive a courtesy copy of your memorandum in support of your motion. The motion may be submitted according to the Judge's individual rules when it is fully briefed. Endorsed on a letter dated 6/15/04 from Henry M. Grubel, Esq. to David Lender, Esq., Michael H. Ference, Esq. and David Covey, Esq., enclosing plt's motion, notice of motion, plt's affidavit in support, and the memorandum of law, in support of plt's motion to disqualify USMJ Pohorelsky from this case. Signed by Judge Sterling Johnson Jr. on 6/24/04. (Nieves, Adrian) (Entered: 06/29/2004)
06/29/2004	90	Letter dated 6/2/04 from Henry Grubel, Esq. to All Counsel enclosing plaintiff's notice of motion and other supporting documents. (Williams-Jackson, Sandy) (Entered: 06/29/2004)
06/29/2004	91	Letter dated 6/15/04 from Henry Grubel, Esq to USDJ Johnson enclosing motion, notice of motion and other supporting documents. (Williams-Jackson, Sandy) (Entered: 06/29/2004)
06/29/2004	92	Letter dated 6/15/04 from David Lender, Esq. to USDJ Johnson regarding Plaintiff's Motion for sanctions Under Rule 11. (Williams-Jackson, Sandy) (Entered: 06/29/2004)

PACER Service Center

Transaction Receipt			
06/30/2004 08:26:55			
PACER Login:	hg0302	Client Code:	
Description:	Docket Report	Search Criteria:	1:02-cv-06492-SJ-VVP Documents: 88
Billable Pages:	1	Cost:	0.07

EXHIBIT 'G'

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

HENRY M. GRUBEL, P.C.

Attorney at Law

37 Prospect Street

Freeport, N. Y. 11520

Phone - (516) 623-4130 Fax - (516) 623-1989

MAY 19 2003 ★

ENTERED

★ _____ ★

May 14, 2003

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

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

Dear Judge Johnson:

Enclosed are courtesy copies of plaintiff's supplemental reply papers, containing newly discovered materials, in further support of plaintiff's motion for default judgments against CITISTREET and COPELAND ASSOCIATES, Inc. Oral argument is still requested. ECF filing of any of the papers previously served has not been done as yet.

Respectfully,

/s

Henry M. Grubel (3211)

Cc:

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

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

CITISTREET
3 Battery March Park
Quincy, Mass 02169

COPELAND ASSOCIATES, Inc.
2 Tower Center
East Brunswick, N.J. 08816

EXHIBIT 'H'

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 LOPRESTI, :
5 Plaintiff, : CV-02-6492 (SJ)
6 v. : July 7, 2003
7 CITIGROUP, INC., et al., : Brooklyn, New York
8 Defendants. :
9 -----X

10 TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
11 BEFORE THE HONORABLE VIKTOR V. POHORELSKY
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff: HENRY GRUBEL, ESQ.

15
16 For the Defendant: DAVID LENDER, ESQ.
PETER HAGIMAN, ESQ.

17
18 Audio Operator:

19
20 Court Transcriber: ELIZABETH BARRON
21 328 President Street, #3
22 Brooklyn, New York 11231
23 (718) 596-3802
24

25 Proceedings recorded by electronic sound recording,
transcript produced by transcription service

EXHIBIT 'I'

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

June 15, 2004

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

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

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

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JUN 15 2004

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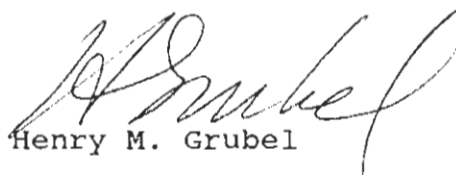
Gentlemen:

Re: LoPresti v Citigroup Inc. et al.
E.D.N.Y. CV-02-6492 (SJ) (VVP)

Enclosed herewith, please find plaintiff's motion, notice of motion, plaintiff's affidavit in support, and the memorandum of law, in support of plaintiff's motion to disqualify Magistrate Judge Pohorelsky from this case.

This motion will be filed with the Court today. I am also sending courtesy copies of these motion papers to Judge Sterling Johnson, Jr. and Magistrate Judge Viktor V. Pohorelsky.

Yours, etc.


Henry M. Grubel

Cc: Judge Sterling Johnson, Jr.
Magistrate Judge Viktor Pohorelsky

Via Fedex next day service to all counsel and the Judges.
Via Hand delivery to the Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

CARMINE A. LoPRESTI,

CV-02-6492 (SJ) (VVP)

Plaintiff,

-against-

NOTICE OF MOTION TO
DISQUALIFY
MAGISTRATE JUDGE
POHORELSKY

CITIGROUP, INC., et al.,

Defendants.

-----X

To: Attorneys for the defendants:

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

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

JUN 15 2004 ★

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

ENTERED
★ _____ ★

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

PLEASE TAKE NOTICE that upon the attached affidavit of the plaintiff and the Memorandum of Law, the plaintiff will move the Court on July 16, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before Magistrate Judge Viktor V. Pohorelsky, in the United States District Court, Eastern District of N.Y., at 225 Cadman Plaza East, Brooklyn, N.Y. 11201 to have Magistrate Judge Viktor V. Pohorelsky disqualify himself from presiding as the assigned Magistrate Judge in this action and to have another Magistrate Judge be assigned to hear this case all pursuant to 28 USCS §§ 144 and 455(b)(1).

EXHIBIT 'J'

Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4100

June 2, 2004

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

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

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

Gentlemen:

Re: LoPresti v Citigroup Inc. et al.
E.D.N.Y. CV-02-6492 (SJ) (VVP)

Enclosed herewith please find plaintiff's motion and notice of motion, together with my affidavit in support and memorandum of law in support of plaintiff's motion for sanctions under Rule 11 arising out of the allegations that CITISTREET and COPELAND ASSOCIATES, Inc. are non-existent and/or non cognizable entities.

These papers will not be filed with the court until 21 days have elapsed.

Yours, etc.



Henry M. Grubel

Cc: Judge Sterling Johnson, Jr.
Magistrate Judge Viktor Pohorelsky
(Only this covering letter)

Via Fedex to all counsel.
Via USPS to the Court

EXHIBIT 'K'

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

CARMINE A. LOPRESTI,

CV-02-6492 (SJ) (VVP)

Plaintiff,

-against-

NOTICE OF MOTION TO
DISQUALIFY
MAGISTRATE JUDGE
POHORELSKY

CITIGROUP, INC., et al.,

Defendants.

-----X

To: Attorneys for the defendants:

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

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

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

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JUN 15 2004 ★

ENTERED

★ _____ ★

PLEASE TAKE NOTICE that upon the attached affidavit of the plaintiff and the Memorandum of Law, the plaintiff will move the Court on July 16, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before Magistrate Judge Viktor V. Pohorelsky, in the United States District Court, Eastern District of N.Y., at 225 Cadman Plaza East, Brooklyn, N.Y. 11201 to have Magistrate Judge Viktor V. Pohorelsky disqualify himself from presiding as the assigned Magistrate Judge in this action and to have another Magistrate Judge be assigned to hear this case all pursuant to 28 USCS §§ 144 and 455(b)(1).

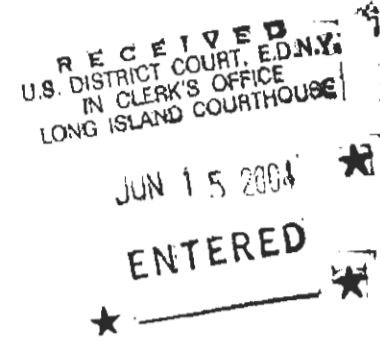
Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 623-4130

June 15, 2004

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

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

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



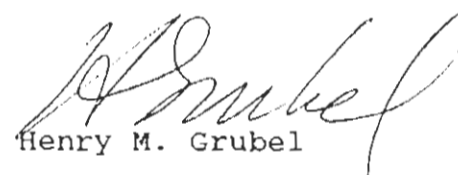
Gentlemen:

Re: LoPresti v Citigroup Inc. et al.
E.D.N.Y. CV-02-6492 (SJ) (VVP)

Enclosed herewith, please find plaintiff's motion, notice of motion, plaintiff's affidavit in support, and the memorandum of law, in support of plaintiff's motion to disqualify Magistrate Judge Pohorelsky from this case.

This motion will be filed with the Court today. I am also sending courtesy copies of these motion papers to Judge Sterling Johnson, Jr. and Magistrate Judge Viktor V. Pohorelsky.

Yours, etc.


Henry M. Grubel

Cc: Judge Sterling Johnson, Jr.
Magistrate Judge Viktor Pohorelsky

Via Fedex next day service to all counsel and the Judges.
Via Hand delivery to the Court

EXHIBIT 'L'

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARMINE A. LOPRESTI, et al.,

Plaintiffs,

- v -

CITIGROUP, INC., et al.,

Defendants.
-----X

ORDER

CV-02-6492 (SJ)(VVP)

The plaintiffs have moved, pursuant to 28 U.S.C. §§ 144 and 455(b)(1) to disqualify the undersigned magistrate judge from presiding over further proceedings in this action. Any party wishing to submit papers in support of, or in opposition to, the motion shall serve and file such papers by July 6, 2004. A hearing on the motion will be held on **Friday, July 16, 2004 at 2:30 p.m.** in Room 518 of the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York. Only counsel who wish to be heard orally are required to attend the hearing.

SO ORDERED:


VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
June 17, 2004

(84)

EXHIBIT 'M'

Law Office of
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, N. Y. 11520
Phone - (516) 823-4130

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 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

EXHIBIT 'N'

EXHIBIT 'O'



WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

AUSTIN
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PARIS
PRAGUE
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.

DAVID J. LENDER
DIRECT LINE (212) 310-8153
E-MAIL: david.lender@weil.com

June 15, 2004

BY FACSIMILE

The Honorable Sterling Johnson
United States District Court E.D.N.Y.
225 Cadman Plaza East
Brooklyn, New York 11021

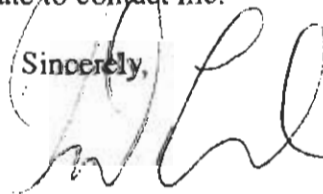
Re: CV-02-6492, Carmine A. LoPresti v. Citigroup, Inc., et al.

Dear Judge Johnson:

This law firm represents Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, Citistreet Financial Services LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Citigroup Global Markets Inc. (formerly known as Salomon Smith Barney Inc.), Smith Barney Corporate Trust Company, and Sanford I. Weill and State Street Corporation and David A. Spina in the above referenced matter (the "Defendants"). I write in regard to Plaintiff's Motion for Sanctions Under Rule 11 ("Plaintiff's Motion").

Pursuant to FRCP 11(c)(1)(A), Defendants are provided twenty-one (21) days from service of Plaintiff's Motion to withdraw and/or correct the allegation that was made a subject of Plaintiff's Motion. This subdivision of Rule 11 is referred to as its "safe-harbor" provision. Safe Strap Co. v. Koala Corp., 220 F. Supp. 2d. 407, 421 (S.D.N.Y. 2003). Plaintiff's counsel, in a letter accompanying the motion, has indicated his intention to file the motion upon the expiration of Rule 11's twenty-one (21) day "safe-harbor" period. Accordingly, Defendants intend to serve and file their opposition to Plaintiff's Motion within ten (10) business days following the expiration of the twenty-one (21) day period. Should you have any questions, please do not hesitate to contact me.

Sincerely,



David J. Lender

cc (by mail): Hon. Viktor V. Pohorelsky

NY1:126435901R3L301:DOC77948.0010

WEIL, GOTSHAL & MANGES LLP

The Honorable Sterling Johnson
June 15, 2004
Page 2

cc (by mail): Henry M. Grubel, Esq.
Michael H. Ference, Esq.
David Covey, Esq.

NY1A126435901R3L3011.DOC\77948.0010

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

In re CARMINE A. LOPRESTI,

Petitioner,

-against-

CERTIFICATE OF SERVICE

CITIGROUP, INC., et. al.

Respondents.

-----X

I, Henry M. Grubel, the attorney of record for the plaintiff/petitioner in this action, certify that on July 2, 2004, I personally served the within PETITION FOR WRITS OF MANDAMUS AND/OR PROHIBITION dated June 30, 2004, upon the Judge and Magistrate Judge, assigned to this case #02-CV-6492, Judge Sterling Johnson, Jr. and Magistrate Judge Viktor V. Pohorelsky, and on the Clerk of the Court, Robert C. Heinemann by delivering to each one of them a copy of the aforesaid petition and exhibits by delivering them to the Clerk's office in the United States District Court for the Eastern District of New York in Central Islip, New York. I also served copies of the petition on July 2, 2004, by FedEx by sending copies thereof via next day delivery, upon the attorneys for the defendants/respondents who have appeared in this action, addressed as follows:

David J. Lender, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
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

Dated: July 2, 2004
Freeport, N.Y.



HENRY M. GRUBEL (HG-3211)
HENRY M. GRUBEL, P.C.
Attorney for Plaintiff
37 Prospect Street
Freeport, New York 11520
516-623-4100