

WEIL, GOTSHAL & MANGES LLP

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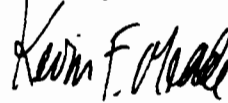
Henry M. Grubel
37 Prospect Street
Freeport, NY 11520

Re: *Lopresti v. Weil, Gotshal & Manges LLP*, 09 Civ. 2328
(HB)(HBP)

Dear Mr. Grubel:

I have enclosed a copy of Defendants' letter to Judge Baer, dated April 30, 2009, which was endorsed and signed by Judge Baer on May 5, 2009.

Sincerely,



Kevin Meade

Enc.

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April 30, 2009

**HAROLD BAER
U.S. DISTRICT JUDGE
S.D.N.Y.**

HOWARD B. COMET
DIRECT LINE (212) 310-8424
E-MAIL: howard.comet@weil.com

BY HAND DELIVERY

The Honorable Harold Baer
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

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DOC #: _____
DATE FILED: 5/6/09

Re: *Lopresti v. Weil, Gotshal & Manges LLP*, 09 Civ. 2328 (HB)
(HBP)

Dear Judge Baer:

We represent Defendants in the above-entitled action. On April 27, 2009, Defendants filed a motion (i) to dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction, (ii) to sanction Plaintiff and his counsel, Henry M. Grubel, pursuant to 28 U.S.C. § 1927 and the Court's inherent power, for bad faith and vexatious litigation, and (iii) to enjoin Plaintiff and Mr. Grubel from filing any further actions in connection with the allegations asserted in the original and Amended Complaint. On April 28, 2009, Plaintiff filed a notice of voluntary dismissal without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

Despite Plaintiff's voluntary dismissal, it is well-established that the Court retains jurisdiction to consider Defendants' request for sanctions and an injunction. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990); *Chemiakin v. Yehimov*, 932 F.2d 124, 129-30 (2d Cir. 1991); *Bolivar v. Pocklington*, 975 F.2d 28, 31 (1st Cir. 1992). See also *Bridgewater Operating Corp. v. Feldstein*, 346 F.3d 27, 30 n. 4 (2d Cir. 2003) (district court can issue filing injunction despite lack of subject matter jurisdiction to consider merits of claims). In *Cooter*, the Supreme Court held that the right to a voluntary dismissal under Fed. R. Civ. P. 41 does not "secure the right to file baseless papers," which "put the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay." 496 U.S. at 398. Because a litigant will "lose all incentive to 'stop, think and investigate more carefully before serving and filing papers'" if it can "expunge" sanctionable conduct simply by dismissing an action, the Court concluded that a voluntary dismissal does not divest a district court of jurisdiction to impose sanctions. *Id.*

WEIL, GOTSHAL & MANGES LLP

The Honorable Harold Baer
April 30, 2009
Page 2

Despite the voluntary dismissal in this case, therefore, the Court has jurisdiction to consider Defendants' request for sanctions and an injunction. Indeed, given the history of Plaintiff and his counsel in seeking to repeatedly litigate the same issue (as described in detail in our motion papers), an injunction is particularly important. Accordingly, we believe that Plaintiff is required to respond to that portion of Defendants' pending motion within the time required by the Local Rules and we respectfully request that the Court grant the relief Defendants requested.

Respectfully submitted,

Howard B. Comet
Howard B. Comet

cc: Henry M. Grubel, Esq. (by e-mail)

While this conduct is not to be condoned and it is cautioned that another lawsuit will likely result in sanctions & injunctive relief no such relief is granted at this time. That suit will be required to ratify this Court should he file another lawsuit in this or the Eastern District of New York.

SO ORDERED:
Harold Baer, Jr.
Harold Baer, Jr., U.S.D.J.
Date: 5/5/09

Endorsement :

While this conduct is not to be condoned and plaintiff is cautioned that another baseless suit will likely result in sanctions and injunctive relief no such relief is granted at this time. The plaintiff will be required to notify this Court should he file another lawsuit in this or the Eastern District of New York.



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Atty Ducks Sanctions For Suit Against Weil Gotshal

By **Pete Brush**

Law360, New York (May 07, 2009) -- A federal judge has declined to sanction the attorney for a plaintiff who sued Weil Gotshal & Manges LLP for fraud over its representation of Citigroup Inc. in a failed benefits lawsuit against the banking giant.

But, according to Judge Harold Baer Jr.'s ruling Tuesday in the U.S. District Court for the Southern District of New York, attorney Henry M. Grubel must notify the court if he brings additional litigation against the firm in the judge's district or the Eastern District of New York.

"While this conduct is not to be condoned and plaintiff is cautioned that another baseless suit will likely result in sanctions and injunctive relief — no such relief is granted at this time," Judge Baer wrote. "The plaintiff will be required to notify this court should he file another lawsuit in this or the Eastern District of New York."

In a letter dated April 30, Weil Gotshal attorney Howard B. Comet asked the judge to sanction Grubel for "bad faith and vexatious litigation" and sought an injunction blocking the attorney from further actions in connection with the allegations in the dismissed lawsuits.

"Given the history of plaintiff and his counsel in seeking to repeatedly litigate the same issue ... an injunction is particularly important," the firm added.

Grubel's fraud lawsuit, filed in March, accuses the firm of "deceit" in its representation of Citigroup in the *LoPresti v. Citigroup Inc.* benefits case, which was dismissed in April 2005 and affirmed on appeal in October 2006. Weil Gotshal represented Citigroup in the case.

The original lawsuit charges Citigroup Inc. with violations of the Employee Retirement Income Security Act and antitrust laws, among many other allegations. It was initially filed in state court and then withdrawn.

Grubel's latest lawsuit seeks litigation costs and \$100 million — the amount sought in the initial lawsuit — as well as damages and other relief.

"A lawyer cannot counsel his client to engage in illegal or fraudulent conduct," the complaint against Weil says, adding the firm lied in court when it argued in the original case that Citistreet was not a corporate entity.

The firm sought a dismissal of the newly filed case in motions dated April 15 and April 27. Court papers filed by the firm seeking dismissal argue that Carmine A. LoPresti — the plaintiff in both cases — and Grubel "cannot believe that this action has merit."

On April 28, court documents show, Grubel assented to a voluntary dismissal without prejudice for lack of jurisdiction.

The plaintiff in the case is represented by Henry M. Grubel PC.

Defendant Weil Gotshal is representing itself.

The parties could not immediately be reached for comment on Thursday.

The case is LoPresti v. Weil Gotshal & Manges LLP et al., case number 09-cv-02328, in the U.S. District Court for the Southern District of New York.

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FAX

From: HENRY M. GRUBEL
Attorney at Law
37 Prospect St.
Freeport, NY 11520

Phone # 516-623-4100
Fax # 516-623-1989
E-mail: Recallit@aol.com
(Not to be used for service of papers)

PLEASE GIVE THIS TO: Howard B Cornett Esq.

DATE: 8-13-09 **Number of pages** 1
(with this cover sheet)

ENTITY: WG+M **Fax Only** **Fax & Mail**

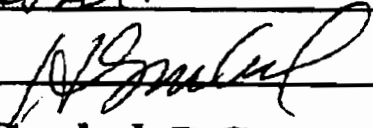
TO FAX #: 212-310-8007 **SENT @ about:** 11:30 a.m. p.m.

RE: Lopres v NG+M et al 09CV2328

cc: N/A

MESSAGE: Please provide me with:
all exhibits attached to Declaration of Campbell
all " " " " " of Lender
Supplemental memo of Law

all the above regarding your 12 B1 motion
in the above captioned matter.



Law Office of Henry M. Grubel, P.C.

Subj: **LoPresti v. Weil, Gotshal & Manges LLP, 09 Civ. 2328**
Date: 8/13/2009 4:47:53 P.M. Eastern Daylight Time
From: Kevin.Meade@weil.com
To: recallit@aol.com
CC: howard.comet@weil.com

Mr. Grubel,

We have received your facsimile requesting copies of various parts of the papers from Defendants' motion to dismiss. We previously served these papers on you (and they are also available from the Court), you voluntarily discontinued your action, and we do not intend to incur further expense and inconvenience to provide you with duplicates of papers that were previously served on you.

Kevin F. Meade
Weil, Gotshal & Manges LLP
767 Fifth Avenue
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Tel: 212-310-8487 (direct)
Fax: 212-310-8007
kevin.meade@weil.com

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