

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:05-cv-02860-RJH**

Barnett et al v. Elan Corp., P.L.C. et al

Date Filed: Mar. 15, 2005
Status: Closed
Nature of suit: 850 Securities/Commodities
Assigned to: [Judge Richard J. Holwell](#)
Cause: 15:78m(a) Securities Exchange Act
Date terminated: May 15, 2008
Jurisdiction: Federal Question
Jury demand: Plaintiff
Member cases: [1:05-cv-07884-RJH](#) *Sidney D. Feldman Family Trust v. Institutional Investor Group et al*
[1:05-cv-07885-RJH](#) *Haddad et al v. Elan Corporation, PLC et al*

Related cases:
1:05-cv-03166-RJH
1:05-cv-07884-RJH
1:05-cv-07885-RJH

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Intervenor Plaintiff
William Haddad

Docket Proceedings[Reverse Proceedings](#)

Req #	Filed	#	Docket Text
1	Mar. 15, 2005	1	COMPLAINT against Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman. (Filing Fee \$ 250.00, Receipt Number 537534)Document filed by Philip Barnett, Rickie D. Frazier, Zelma T. Frazier.(laq,) Additional attachment(s) added on 3/18/2005 (laq,). (Entered: 03/16/2005)
2	Mar. 15, 2005		SUMMONS ISSUED as to Shane Cooke, Elan Corp., P.L.C., Kelly Martin,

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			Lars Eckman. (laq,) (Entered: 03/16/2005)
<u>3</u>	Mar. 15, 2005	2	RULE 7.1 DISCLOSURE STATEMENT. Document filed by Philip Barnett, Rickie D. Frazier, Zelma T. Frazier.(laq,) Additional attachment(s) added on 3/18/2005 (laq,). (Entered: 03/16/2005)
<u>4</u>	Mar. 15, 2005		Magistrate Judge James C. Francis is so designated. (laq,) (Entered: 03/16/2005)
<u>5</u>	Mar. 15, 2005		Case Designated ECF. (laq,) (Entered: 03/16/2005)
<u>6</u>	May 03, 2005	3	MOTION to Appoint The Conus Fund Group to serve as lead plaintiff(s). Document filed by The Conus Fund Group. (Brody, Aaron) (Entered: 05/03/2005)
<u>7</u>	May 03, 2005	4	MEMORANDUM OF LAW in Support re: 3 MOTION to Appoint The Conus Fund Group to serve as lead plaintiff(s).. Document filed by The Conus Fund Group. (Brody, Aaron) (Entered: 05/03/2005)
<u>8</u>	May 03, 2005	5	MOTION to Appoint Kyle Newcomer to serve as lead plaintiff(s). Document filed by kyle newcomer. (Attachments: # 1 Text of Proposed Order)(Bernarduci, William) (Entered: 05/03/2005)
<u>9</u>	May 03, 2005	6	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - MOTION to Appoint Kyle Newcomer to serve as lead plaintiff(s) (memorandum of law in support of motion). Document filed by Kyle Newcomer. (Bernarduci, William) Modified on 5/10/2005 (kg). (Entered: 05/03/2005)
<u>10</u>	May 03, 2005	7	DECLARATION of William Bernarduci in Support. Document filed by kyle newcomer. (Attachments: # 1 Exhibit certification# 2 Exhibit loss chart# 3 Exhibit notice# 4 Exhibit resumr)(Bernarduci, William) (Entered: 05/03/2005)
<u>11</u>	May 03, 2005	8	AFFIDAVIT of Bradley P. Dyer in Support re: 3 MOTION to Appoint The Conus Fund Group to serve as lead plaintiff(s).. Document filed by The Conus Fund Group. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D)(Brody, Aaron) (Entered: 05/03/2005)
<u>12</u>	May 03, 2005	9	MOTION to Appoint the Institutional Investor Group to serve as lead plaintiff(s). Document filed by Institutional Investor Group. (Attachments: # 1 Text of Proposed Order)(Lee, Sharon) (Entered: 05/03/2005)
<u>13</u>	May 03, 2005	10	MEMORANDUM OF LAW in Support re: 9 MOTION to Appoint the Institutional Investor Group to serve as lead plaintiff(s).. Document filed by Institutional Investor Group. (Lee, Sharon) (Entered: 05/03/2005)
<u>14</u>	May 03, 2005	11	DECLARATION of Andrei V. Rado in Support re: 9 MOTION to Appoint the Institutional Investor Group to serve as lead plaintiff(s).. Document filed by Institutional Investor Group. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E)(Lee, Sharon) (Entered: 05/03/2005)
<u>15</u>	May 10, 2005		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney William Bernarducci to RE-FILE Document 6 MOTION to Appoint Kyle Newcomer to serve as lead plaintiff(s) (memorandum of law in support of motion). Use the document type Memorandum of Law in Support of Motion found under the document list Responses and Replies. (kg) (Entered: 05/10/2005)
<u>16</u>	May 11, 2005	12	MEMORANDUM OF LAW in Support re: 5 MOTION to Appoint Kyle Newcomer to serve as lead plaintiff(s).. Document filed by kyle newcomer. (Bernarduci, William) (Entered: 05/11/2005)

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<u>17</u>	May 17, 2005	13	MEMORANDUM OF LAW in Opposition re: 5 MOTION to Appoint Kyle Newcommer to serve as lead plaintiff(s)., 3 MOTION to Appoint The Conus Fund Group to serve as lead plaintiff(s).. Document filed by Institutional Investor Group. (Seidman, Peter) (Entered: 05/17/2005)
<u>18</u>	May 17, 2005	14	CERTIFICATE OF SERVICE of MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE MOTION OF THE INSTITUTIONAL INVESTOR GROUP FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF LEAD COUNSEL AND IN OPPOSITION TO THE COMPETING MOTIONS. Document filed by Institutional Investor Group. (Seidman, Peter) (Entered: 05/17/2005)
<u>19</u>	May 17, 2005	15	RESPONSE to Motion re: 5 MOTION to Appoint Kyle Newcommer to serve as lead plaintiff(s)., 3 MOTION to Appoint The Conus Fund Group to serve as lead plaintiff(s)., 9 MOTION to Appoint the Institutional Investor Group to serve as lead plaintiff(s).. Document filed by kyle newcomer. (Bernarduci, William) (Entered: 05/17/2005)
<u>20</u>	May 24, 2005	16	NOTICE of NON-OPPOSITION TO THE INSTITUTIONAL INVESTOR GROUP'S MOTION FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND FOR APPROVAL OF SELECTION OF CO-LEAD COUNSEL. Document filed by Institutional Investor Group. (Lee, Sharon) (Entered: 05/24/2005)
<u>21</u>	Aug. 08, 2005	17	MEMORANDUM OPINION AND ORDER #91980 The Court consolidates the SDNY Actions, appoints the Institutional Investor Group as lead plaintiff, and designates Milberg Weiss and Entwistle and Cappucci LLP as co-lead counsel. The Court also directs the parties to show cause why this consolidated action should not be transferred to the District of Massachusetts. So Ordered. (Signed by Judge Richard J. Holwell on 8/4/05) (jco,) Modified on 8/10/2005 (ns,). (Entered: 08/09/2005)
<u>22</u>	Aug. 31, 2005	18	ENDORSED LETTER addressed to Judge Holwell from Richard Weiss dated 8/18/05: re 8/4 order directing the parties to submit briefing re transfer of the case to Ma: no additional briefing shall be necessary. (Signed by Judge Loretta A. Preska on 8/30/05) (cd,) (Entered: 09/01/2005)
<u>23</u>	Oct. 20, 2005	19	NOTICE of Change of Address by Robert N Cappucci on behalf of Institutional Investor Group. New Address: Entwistle & Cappucci LLP, 280 Park Avenue, 26th Floor West, New York, New York, USA 10017, 212-894-7200. (Cappucci, Robert) (Entered: 10/20/2005)
<u>24</u>	Feb. 24, 2006	20	ORDER: this action (05cv2860) is consolidated (as Lead Case) with 05cv7884 and 05cv7885 (as Member Cases) for all purposes, along with any other actions now pending or later filed in this district that are related. (Signed by Judge Richard J. Holwell on 2/23/06) (db,) (Entered: 02/27/2006)
<u>25</u>	Sep. 22, 2006	21	NOTICE OF APPEARANCE by James Michael Evangelista on behalf of Activest Investmentgesellschaft mbH (Evangelista, James) (Entered: 09/22/2006)
<u>26</u>	Jan. 04, 2007	22	NOTICE of Notice of Firm Name Change. Document filed by Activest Investmentgesellschaft mbH. (Attachments: # 1 Certificate of Service)(Gittleman, Ann) (Entered: 01/04/2007)
<u>27</u>	Feb. 16, 2007	23	CONSOLIDATED CLASS ACTION COMPLAINT for Violations of the

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			Federal Securities Laws against Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman. (Filing Fee \$ 350.00.) Document filed by Activest Investmentgesellschaft mbH.(djc) (Entered: 03/02/2007)
28	Mar. 07, 2007	24	STIPULATION AND ORDER defedants shall move to dismiss, answer the complaint or file motion to dismiss by 4/20/07; opposition to motion due 6/22/07; reply due 7/24/07. So Ordered. (Signed by Judge Richard J. Holwell on 3/3/07) (jco) (Entered: 03/08/2007)
29	Apr. 20, 2007	25	NOTICE OF APPEARANCE by Jaculin Aaron on behalf of Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman (Aaron, Jaculin) (Entered: 04/20/2007)
30	Apr. 20, 2007	26	NOTICE OF APPEARANCE by Daniel Martin Segal on behalf of Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman (Segal, Daniel) (Entered: 04/20/2007)
31	Apr. 20, 2007	27	NOTICE OF APPEARANCE by Stuart Jay Baskin on behalf of Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman (Baskin, Stuart) (Entered: 04/20/2007)
32	Apr. 20, 2007	28	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Elan Corp., P.L.C..(Segal, Daniel) (Entered: 04/20/2007)
33	Apr. 20, 2007	29	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - MOTION to Dismiss the Consolidated Class Action Complaint. Document filed by Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman.(Segal, Daniel) Modified on 4/27/2007 (lb). (Entered: 04/20/2007)
34	Apr. 20, 2007	30	FILING ERROR - DEFICIENT DOCKET ENTRY - (LINKED TO THE WRONG MOTION) - DECLARATION of Jaculin Aaron in Support re: 29 MOTION to Dismiss the Consolidated Class Action Complaint.. Document filed by Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman. (Attachments: # 1 Exhibits 1-3# 2 Exhibit 4, Part 1# 3 Exhibit 4, Part 2# 4 Exhibit 4, Part 3# 5 Exhibits 5-11# 6 Exhibits 12-16# 7 Exhibits 17-23)(Segal, Daniel) Modified on 4/27/2007 (lb). (Entered: 04/20/2007)
35	Apr. 24, 2007	31	MOTION to Dismiss the Consolidated Class Action Complaint. Document filed by Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman.(Segal, Daniel) (Entered: 04/24/2007)
36	Apr. 24, 2007	32	MEMORANDUM OF LAW in Support re: 31 MOTION to Dismiss the Consolidated Class Action Complaint.. Document filed by Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman. (Segal, Daniel) (Entered: 04/24/2007)
37	Apr. 24, 2007	33	DECLARATION of Jaculin Aaron in Support re: 31 MOTION to Dismiss the Consolidated Class Action Complaint.. Document filed by Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman. (Attachments: # 1 Exhibits 1-3# 2 Exhibit 4, Part 1# 3 Exhibit 4, Part 2# 4 Exhibit 4, Part 3# 5 Exhibits 5-11# 6 Exhibits 12-16# 7 Exhibits 17-23)(Segal, Daniel) (Entered: 04/24/2007)
38	Jun. 12, 2007	34	MOTION for Ann K. Ritter to Appear Pro Hac Vice. Document filed by Activest Investmentgesellschaft mbH.(jco) Additional attachment(s) added on 6/15/2007 (Correa, Julie). (Entered: 06/15/2007)
39	Jun. 25, 2007	35	STIPULATION AND ORDER that lead plaintiffs shall file and serve their papers in opposition to dfts' motion to dismiss no later than 7/20/07 and dfts shall file and serve any reply papers in connection with their motion to

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			dismiss no later than 9/7/07. (Signed by Judge Richard J. Holwell on 6/21/07) Set Deadlines/Hearing as to 31 MOTION to Dismiss the Consolidated Class Action Complaint. : Responses due by 7/20/2007 Replies due by 9/7/2007.(dle) (Entered: 06/26/2007)
40	Jul. 09, 2007		CASHIERS OFFICE REMARK on 34 Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 06/12/2007, Receipt Number 618003. (jd) (Entered: 07/09/2007)
41	Jul. 17, 2007	36	NOTICE of Firm Name Change. Document filed by Activest Investmentgesellschaft mbH. (Attachments: # 1 Certificate of Service)(Gittleman, Ann) (Entered: 07/17/2007)
42	Jul. 20, 2007	37	MEMORANDUM OF LAW in Opposition re: 31 MOTION to Dismiss the Consolidated Class Action Complaint. Plaintiffs' Opposition to Defendants' Motion to Dismiss the Consolidated Class Action Complaint. Document filed by Activest Investmentgesellschaft mbH. (Cappucci, Robert) (Entered: 07/20/2007)
43	Sep. 07, 2007	38	REPLY MEMORANDUM OF LAW in Support re: 31 MOTION to Dismiss the Consolidated Class Action Complaint.. Document filed by Shane Cooke, Elan Corp., P.L.C., Kelly Martin, Lars Eckman. (Segal, Daniel) (Entered: 09/07/2007)
44	Oct. 25, 2007	39	ORDER granting 34 Motion for Ann K. Ritter to Appear Pro Hac Vice. It is hereby ordered that Ann K. Ritter is admitted pro hac vice for the purposes of the above-captioned case. Counsel shall immediately apply for an ECF password at http://nysd.uscourts.gov . (Signed by Judge Richard J. Holwell on 10/15/07) (tro) (Entered: 10/25/2007)
45	Oct. 25, 2007		Transmission to Attorney Admissions Clerk. Transmitted re: 39 Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (tro) (Entered: 10/25/2007)
46	Feb. 15, 2008	40	ORDER the parties are directed to appear on March 13, 2008 at 3:30 p.m. in the Courtroom of the Honorable Richard J. Holwell, Courtroom 17B, 500 Pearl Street, New York, New York 10007, for oral argument on defendants' motion to dismiss. SO ORDERED. (Oral Argument set for 3/13/2008 at 03:30 PM in Courtroom 17B, 500 Pearl Street, New York, NY 10007 before Judge Richard J. Holwell.) (Signed by Judge Richard J. Holwell on 2/14/2008) (jmi) (Entered: 02/15/2008)
47	Mar. 26, 2008	41	NOTICE of Change of Law Firm Name. Document filed by Activest Investmentgesellschaft mbH. (Weiss, Richard) (Entered: 03/26/2008)
48	Mar. 27, 2008	42	MEMORANDUM ORDER AND OPINION re: 31 MOTION to Dismiss the Consolidated Class Action Complaint filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin. Because the Court finds that Plaintiffs have failed to adequately plead both materiality and scienter, we do not reach the remaining arguments offered by Defendants in support of their motion to dismiss. Defendants' motion to dismiss 31 is GRANTED and Plaintiffs' Complaint is dismissed in its entirety. In their opposition brief, Plaintiffs requested leave to amend their Complaint in the event of dismissal. See Van Buskirk v. New York Times Co., 325 F. 3d 87, 91 (2d Cir. 2003) ("[I]t is often appropriate for a district court, when granting a motion to dismiss for failure to state a claim, to give the plaintiff leave to file an amended complaint."). Plaintiffs are permitted to file a motion for leave to amend in which they set forth their proposed amendments. So

Req #	Filed	#	Docket Text
			Ordered. (Signed by Judge Richard J. Holwell on 3/27/08) (jco) (Entered: 03/28/2008)
49	Mar. 28, 2008	43	TRANSCRIPT of proceedings held on 3/13/08 4:00pm before Judge Richard J. Holwell. (pr) Modified on 6/17/2008 (djc). (Entered: 03/28/2008)
50	Apr. 10, 2008	44	ENDORSED LETTER addressed to Judge Richard J. Holwell from Richard H. Weiss dated 4/4/2008 re: Requesting that the Court set a time limit of 45 days within which Plaintiffs must file their motion for leave to amend. ENDORSEMENT: SO ORDERED. (Signed by Judge Richard J. Holwell on 4/8/2008) (jpo) (Entered: 04/10/2008)
51	May 15, 2008	45	ENDORSED LETTER addressed to Judge Richard J. Holwell from Vincent R. Cappucci dated 5/12/08 re: Plaintiff have decided not to move to amend the Complaint. ENDORSEMENT: The Clerk is directed to close this case. (Signed by Judge Richard J. Holwell on 5/15/08) (tro) (Entered: 05/15/2008)
52	May 15, 2008	46	CLERK'S JUDGMENT in favor of Elan Corp., P.L.C., Kelly Martin, Lars Eckman, Shane Cooke against Activest Investmentgesellschaft mbH, Institutional Investor Group, Sidney D. Feldman Family Trust, Philip Barnett, Rickie D. Frazier, Wendell Williams, William Haddad, Zelma T. Frazier, kyle newcomer granting defts' motion to dismiss. (Signed by J. Michael McMahon, Clerk on 5/15/08) (jf) (Additional attachment(s) added on 5/15/2008: # 1 notice of right to appeal) (jf). (Entered: 05/15/2008)
53	Jun. 13, 2008	47	NOTICE OF APPEAL from 46 Clerk's Judgment. Document filed by Activest Investmentgesellschaft mbH, MN Services, Third Millennium Trading, LLP, Electronic Trading Group LLC, Horatio Capital LLC and Donald S. Frank Filing fee \$ 455.00, receipt number E 654042. (nd) (Entered: 06/13/2008)
54	Jun. 13, 2008		Transmission of Notice of Appeal to the District Judge re: 47 Notice of Appeal,. (nd) (Entered: 06/13/2008)
55	Jun. 13, 2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 47 Notice of Appeal,. (nd) (Entered: 06/13/2008)
56	Jun. 13, 2008		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 27 Notice of Appearance filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 28 Rule 7.1 Corporate Disclosure Statement filed by Elan Corp., P.L.C., 13 Memorandum of Law in Opposition to Motion filed by Institutional Investor Group, 11 Declaration in Support of Motion, filed by Institutional Investor Group, 37 Memorandum of Law in Opposition to Motion, filed by Activest Investmentgesellschaft mbH, 9 MOTION to Appoint the Institutional Investor Group to serve as lead plaintiff(s). filed by Institutional Investor Group, 24 Stipulation and Order, 22 Notice (Other) filed by Activest Investmentgesellschaft mbH, 36 Notice (Other) filed by Activest Investmentgesellschaft mbH, 20 Order, 1 Complaint, filed by Philip Barnett, Zelma T. Frazier, Rickie D. Frazier, 8 Affidavit in Support of Motion filed by The Conus Fund Group, 19 Notice of Change of Address filed by Institutional Investor Group, 16 Notice (Other) filed by Institutional Investor Group, 45 Endorsed Letter, 15 Response to Motion, filed by kyle newcomer, 21 Notice of Appearance filed by Activest Investmentgesellschaft mbH, 31 MOTION to Dismiss the Consolidated

Req #	Filed	#	Docket Text
			Class Action Complaint. filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 41 Notice (Other) filed by Activest Investmentgesellschaft mbH, 35 Stipulation and Order, Set Motion and R&R Deadlines/Hearings,, 14 Certificate of Service Other, filed by Institutional Investor Group, 4 Memorandum of Law in Support of Motion filed by The Conus Fund Group, 26 Notice of Appearance filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 10 Memorandum of Law in Support of Motion filed by Institutional Investor Group, 42 Memorandum & Opinion,,,, 47 Notice of Appeal, filed by Activest Investmentgesellschaft mbH, 39 Order on Motion to Appear Pro Hac Vice, 17 Memorandum & Opinion, 18 Endorsed Letter, 46 Clerk's Judgment, 38 Reply Memorandum of Law in Support of Motion filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 2 Rule 7.1 Corporate Disclosure Statement filed by Philip Barnett, Zelma T. Frazier, Rickie D. Frazier, 5 MOTION to Appoint Kyle Newcommer to serve as lead plaintiff(s). filed by kyle newcomer, 7 Declaration in Support filed by kyle newcomer, 32 Memorandum of Law in Support of Motion filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 25 Notice of Appearance filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 44 Endorsed Letter, Set Deadlines/Hearings,, 29 MOTION to Dismiss the Consolidated Class Action Complaint. filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 3 MOTION to Appoint The Conus Fund Group to serve as lead plaintiff(s). filed by The Conus Fund Group, 23 Complaint filed by Activest Investmentgesellschaft mbH, 33 Declaration in Support of Motion, filed by Elan Corp., P.L.C., Shane Cooke, Lars Eckman, Kelly Martin, 12 Memorandum of Law in Support of Motion filed by kyle newcomer, 40 Order, Set Hearings,, 34 MOTION for Ann K. Ritter to Appear Pro Hac Vice. filed by Activest Investmentgesellschaft mbH were transmitted to the U.S. Court of Appeals. (nd) (Entered: 06/13/2008)
57	Sep. 15, 2008	48	MANDATE of USCA WITHDRAWING APPEAL (Certified Copy) as to 47 Notice of Appeal, filed by Activest Investmentgesellschaft mbH USCA Case Number 08-3023-cv....that the appeal is hereby WITHDRAWN pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. Catherine O'Hagan Wolfe, Clerk USCA. Certified: 9/11/2008. (nd) (Entered: 09/15/2008)
58	Sep. 15, 2008		Transmission of USCA Mandate/Order to the District Judge re: 48 USCA Mandate Withdrawing Appeal,. (nd) (Entered: 09/15/2008)

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