UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

The Eshe Fund, Individually an on behalf of All Those Similarly Situated, Plaintiff, v. Fifth Third Bancorp; Kevin T. Kabat; Citigroup Global Markets Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated; UBS Securities LLC.; Banc of America Securities LLC; and Credit Suisse Securities (USA) LLC, Defendants.	:	Civil Action No. 1:08-cv-421 (Judge Sandra S. Beckwith) (Mag. Judge Timothy S. Black)
Raymond Shackelton, On Behalf of Himself and All Others Similarly Situated, Plaintiff, v. Fifth Third Bancorp; Kevin T. Kabat, Defendants.	:	Civil Action No. 1:08-cv-487 (Judge Sandra S. Beckwith) (Mag. Timothy S. Hogan)

Arnold R. Barnett and Leon H. Loewenstine, Individually and on behalf of All Those Similarly Situated, Plaintiffs, v. Fifth Third Bancorp; Kevin T Kabat; Citigroup Global Markets Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated; UBS Securities LLC.; and Credit Suisse Securities (USA) LLC, Defendants.	:	Civil Action No. 1:08-cv-537 (Judge Sandra S. Beckwith) (Mag. Judge Timothy S. Black)
Sam McGee, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. Fifth Third Bancorp, Kevin T. Kabat, Christopher G. Marshall, Daniel T. Poston, and George A. Schaefer, Jr., Defendants.	:	Civil Action No. 1:08-cv-539 (Judge Sandra S. Beckwith) (Mag. Judge Timothy S. Hogan)

ORDER

This matter is before the Court on three separate motions to be appointed Lead Plaintiff and appoint Lead Counsel for this Consolidated Securities Action against Fifth Third Bancorp ("Fifth Third") and various related Defendants.[1] For the following reasons, the Court **GRANTS** the Pension Trust Fund and Edwin B. Shelton's Motions for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel (Doc. No's 10, 16, and 37) and **DENIES** The Eshe Fund Group's Motion

[1] This Court filed, concurrently with this order, an order consolidating all four securities actions into one Consolidated Securities Action.

for Appointment as Lead Plaintiff and Approval of Its Selection of Lead Counsel under the PSLRA (Doc. No. 9).

I. Summary of Pending Actions and Underlying Facts

Plaintiffs bring these securities fraud class actions against Fifth Third, Kevin T. Kabat, President and CEO of Firth Third, and related Defendants[2] on behalf of all persons who purchased four sub-classes of securities from October 19, 2007 to July 23, 2008 ("the Class Period"). Fifth Third is a diversified financial services holding company headquartered in Cincinnati, Ohio. Throughout the Class Period, Defendants allegedly made a series of false and misleading financial statements affecting the open-market, made material misstatements or omissions in two initial public offerings, and made material misstatements or omissions in its Registration/Proxy Statement with respect to an acquisition.

On October 19, 2007, Fifth Third issued a press release and a quarterly financial supplement announcing its earnings for the third quarter of 2007. Plaintiffs allege that Defendant Kabat's statements were false and misleading. Defendant Kabat failed to disclose that operating expenses were actually increasing at a dangerously swift pace, that Fifth Third was suffering due to higher than expected loan losses, and that it was experiencing more net charge-offs and failed to sufficiently raise loan loss provisions to an adequate level.

On October 25, 2007, Fifth Third's Prospectus for the $750 million Offering of Fifth Third Capital Trust VI ("Preferred B") became effective. Then on November 7, 2007, Fifth Third filed with the SEC its Registration/Proxy Statement and Prospectus for 35,000,000 shares of common stock to

[2]Individual Defendants include Christopher G. Marshall, Executive Vice President and Chief Financial Officer of Fifth Third; Daniel T. Poston, Executive Vice President and Controller of Fifth Third, and George A. Schaefer, Jr., Chairman of the Fifth Third Board of Directors. In addition, the following underwriter Defendants are named in the complaints: Citigroup Global Markets Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; UBS Securities LLC.; Banc of America Securities LLC; and Credit Suisse Securities (USA) LLC.

be issued upon the completion of the merger with First Charter. Plaintiffs allege that the Preferred B Prospectus, the Registration/Proxy Statement, and the First Charter Prospectus negligently omitted the following material information:

> (a) Fifth Third's exposure to certain poorly performing real estate markets, including Florida, Ohio, and Michigan, and the extent to which this exposure was materially increasing;
> (b) Fifth Third's growing exposure to late payments and defaults of mortgages and other non-performing loans, and the extent to which this exposure was materially increasing;
> (c) the extent of the decline in the quality of Fifth Third's Tier 1 capital base;
> (d) the deteriorating credit trends and increasing expenses, including negative trends, in Fifth Third's consumer loan portfolio, including the extent of the increase in late payments and defaults;
> (e) the negative trends in the Company's home equity and commercial construction loans, and the extent to which there was a decrease in the value of the underlying assets and an increase in late payments and defaults; and
> (f) the deterioration in the credit quality of its loans.

The Eshe Fund Compl. ¶51.

Then, on January 22, 2008, Fifth Third issued a press release announcing its fourth quarter of 2007 financial results and the filing of an 8-K statement. Plaintiffs allege that Fifth Third failed to disclose that non-performing assets were rapidly increasing, the loan portfolio needed a substantial infusion of capital, and the increasing negative trends in loan-loss provisions.

Fifth Third then filed its annual 10-K statement on February 22, 2008 and its 8-K statement reporting first quarter of 2008 results on April 22, 2008. Both of these documents were purportedly false and misleading because they failed to accurately and completely disclose the extent of the growth in Fifth Third's non-performing assets and its rapidly increasing loan and lease loss reserves that would require Fifth Third to raise billions in new capital.

On April 28, 2008, a prospectus for the $350 million Offering of Fifth Third Capital Trust VII ("Preferred C") became effective. Plaintiffs allege that Fifth Third negligently omitted the following material information:

(a) credit losses, particularly in Florida and Michigan, were accelerating quickly beyond

> previously disclosed estimates and beyond Fifth Third's ability to manage the risk to its capital reserves and earnings;
> (b) accelerating credit deterioration had spread beyond the residential mortgage and construction loans to the commercial loan portfolio;
> (c) Fifth Third did not have adequate risk management or credit review systems in place to reasonably estimate accelerating credit losses or loss provisions impacting its financial performance;
> (d) Fifth Third needed to source at least $3 billion of additional capital to absorb the rapidly accelerating losses and to reach targeted capital levels; and
> (e) Fifth Third had undertaken a massive emergency revaluation of its credit portfolio and reserves because the failure of its internal credit risk and credit loss management systems had failed and the accelerating losses threatened to further deteriorate existing capital.

Barnett Compl. ¶60.

On June 18, 2008, Fifth Third made the first of two announcements. It stated that quarterly dividends and earnings would be down from the predicted 40 cents per share to as little as 1 to 5 cents per share. Additionally, Fifth Third announced that it had to raise $2 billion through the sale of subsidiaries and issuance of preferred stock and that the cost of uncollectible loans was set to rise in 2009. This announcement allegedly demonstrated that Fifth Third's Tier 1 capital was under pressure.

Then, on July 22, 2008, Fifth Third released its 2008 second quarter results. At this time, Fifth Third announced that, after an extensive review, it had previously materially understated the risk of loss associated with its credit portfolios, that it had taken a significant markdown of assets related to its recently closed purchase of First Charter Corporation, that the deterioration had in fact migrated beyond builders and developers to the rest of the commercial credit portfolios, and, rather than peaking in the first quarter, credit losses could reasonably exceed existing levels in 2009 by as much as 66%.

Since Plaintiffs purchased different forms of stock there are four distinct sub-classes. First, there are Plaintiffs who purchased all publicly-traded Fifth Third securities on the open-market and claim violations under Sections 10(b) [15 U.S.C. § 78j(b)] and 20(a) [15 U.S.C. § 78t] of the

Exchange Act (the "open-market" sub-class). Next, a sub-class of Plaintiffs have asserted claims under Sections 11 [15 U.S.C. § 77k], 12 [15 U.S.C. § 77l], and 15 [15 U.S.C. § 77o] of the Securities Act and Sections 14 [15 U.S.C. §77n] and 20(a) [15 U.S.C. § 78t] of the Exchange Act for material misstatements and omissions in the offering prospectus for Fifth Third's Registration/Proxy Statement with respect to its June 6, 2008 acquisition of First Charter Corporation (the "First Charter" sub-class). The third sub-class consists of Plaintiffs who purchased Preferred B securities based on alleged material misstatements and omissions in the offering prospectus for Fifth Third's October 25, 2007 initial public offering in violation of Section 11, 12, and 15 of the Securities Act. The final sub-class includes those Plaintiffs who purchased Preferred C securities based on purported material misstatements and omissions in the offering prospectus for Fifth Third's April 29, 2008 initial public offering in violation of Sections 11, 12, and 15 of the Securities Act.

The first complaint relative to the alleged misstatements and omissions was filed on June 20, 2008 pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1. *The Eshe Fund v. Fifth Third Bancorp*, No. 1:08-cv-00421-SSB-TSB (complaint filed June 20, 2008). Upon filing the complaint, counsel published the required notice to members of the purported class, which advised class members of the existence of the lawsuit and described the claims asserted. 15 U.S.C. § 78u-4(a)(3)(A)(I). The notice also advised class members of their right to file a motion for Lead Plaintiff no later than 60 days after the notification was published. 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

As a result, the following Lead Plaintiff candidates have emerged:[3]

1. The Eshe Fund Group – a group consisting of one institutional investor and five individual investors whose purported loss was approximately $422,000;

[3] One other candidate, the Institutional Investor Group, originally moved to be Lead Plaintiff but has since withdrawn its motion.

2. The Pension Trust Funds – a group consisting of two institutional investors whose purported loss was approximately $830,000 and Edwin B. Shelton - an individual investor whose purported loss was over $1,000,000.[4]

The Court filed an order consolidating all securities actions contemporaneously with this order.

II. Analysis

A. Legal Framework of the PSLRA

The PSLRA sets forth specific procedures for the appointment of Lead Plaintiff. Specifically, the PSLRA creates a rebuttable presumption that the appropriate Lead Plaintiff is the Plaintiff who: (1) has either filed the complaint or made a motion in response to the notice of the class action; (2) in the determination of the court, has the largest financial interest in the relief sought by the class; and (3) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The movant need only make a preliminary showing that he meets the requirements of Rule 23. *See In re Party City Sec. Litig.*, 189 F.R.D. 91, 106 (D.N.J. 1999). A more formal and in-depth analysis of Rule 23 is saved for consideration of the motion for class certification. *Id.*

The Court engages in a two-step inquiry, looking first at which party has the largest financial interest, and then determining whether the candidate meets the typicality and adequacy requirements of Rule 23(a). *See In re Cardinal Health, Inc. Sec. Litig.*, 226 F.R.D. 298, 302 (S.D. Ohio 2005) (*citing In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002)). "Indeed, the statute presumes that the most adequate plaintiff is the person or group of persons that has the largest financial interest in the relief sought by the class and that otherwise satisfies the requirements of Rule 23." *Id.*

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[4] The Pension Trust Funds and Edwin B. Shelton originally moved this Court for Lead Plaintiff status in their individual capacities. On September 26, 2008, the parties filed a Joint Reply agreeing to work together and asking this Court for appointment as co-Lead Plaintiffs.

Once the court determines the presumed lead plaintiff, any member of the purported class may present evidence rebutting the presumption. 15 U.S.C. § 78u-4(a)(3)(iii)(II).

> The presumption described in subclause (I) may be rebutted only upon proof of a member of the purported class that the presumptively most adequate plaintiff-
>
> **(aa)** will not fairly and adequately protect the interests of the class; or
> **(bb)** is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(iii)(II)(aa)-(bb). If a party successfully rebuts the presumption, the court will next consider the movant with the second largest financial interest.

B. Co-Lead Plaintiffs: The Pension Trust Funds & Shelton

The Court cannot determine which party has the largest financial interest without first determining whether to treat Shelton and the Pension Trust Funds as co-lead plaintiffs. The Joint Reply and Joint Declaration filed by Shelton and the Pension Trust Funds posit that both parties agree to work together as co-lead plaintiffs. The PSLRA explicitly permits more than one entity to come together to serve as lead plaintiff. The statute actually requires the Court to appoint as lead plaintiff the "person or group of persons" that are "most capable of adequately representing the interest of class members." 15 U.S.C. § 78u-4(a)(3)(B)(I) & (iii)(I). This Court requires a case-by-case evaluation to determine whether aggregation is proper:

> The Court must examine each proposed lead plaintiff group on a case by case basis, assessing the size of the group, the purpose for adding any particular individual or entity to the group and the likelihood that the group, as constituted effectively, could serve the lead plaintiff function contemplated by the PSLRA.

Cardinal Health, 226 F.R.D. at 307 [citing *In re Office Max, Inc. Sec. Litig.*, No. 1:00cv2432, slip op. at 13-14 (N.D. Ohio Mar. 21, 2001)].

Combining Shelton and the Pension Trust Funds creates a group of three entities: two institutional investors and one individual investor. Courts are split on the appropriate size of a group,

but the majority of courts are clear that groups of five or less investors are appropriate. *In re Cendant Corp. Litig.*, 264 F.3d 201, 267 (3rd Cir. 2001) (relying partly on an amicus brief filed by the SEC, the court noted that "groups with more than five members are too large to work effectively"). Courts that hold groups to a specified number of parties do so for the purposes of efficiency and cohesiveness. A "group of persons" under the PSLRA means "a small group of manageable size that is capable of joint decisionmaking regarding the litigation." *Takeda v. Turbodyne Techs. Inc.*, 67 F. Supp.2d 1129, 1135 (C.D. Cal. 1999). A large group of unrelated investors will not be able to sufficiently control the litigation and class counsel. *Id.* (citing *Gluck v. Cellstar Corp.*, 976 F.Supp. 542, 549 (N.D. Tex. 1997)).

In addition to the size of the group, courts are split on the necessary relationship between parties of a proposed group. Some courts require some former relationship, or at least a showing that the parties did not aggregate on their lawyers' orders. *See In re Bally Total Fitness Sec. Litig.*, Nos. Nos. 04C3530, 04C3634, 04C3713, 04C3783, 04C3844, 04C3864, 04C3936, 04C4342, 04C4697, 2005 WL 627960, at *2 (N.D. Ill. Mar. 15, 2005) (finding that a relationship must exist *prior* to the litigation - such as family members or affiliated pension funds). Other courts have looked not at the relationship, but at the quality of representation the group will provide to the class. *See In re Tyco Intern., Ltd.*, Nos. 00-MD-1335B, 2000 DNA 180, 2000 WL 1513772 (D.N.H. Aug. 17, 2000) (concentrating on the best interests of the class and the quality of representation a group will be able to provide). This Court adopts the latter approach. The goal of the PSLRA is to appoint the most adequate person or group of persons as lead plaintiff. The most adequate representative will have the largest financial interest and be able to represent the class pursuant to Rule 23. Therefore, this Court will not consider the prior relationship of the group, but the interests of the overall proposed class.

In this case, Shelton and the Pension Trust Funds have presented sufficient information to show that they are willing to work together in the best interests of the proposed class. A group of

two institutional investors and one shareholder, with the largest financial stake in the litigation, is appropriate in this circumstance. Therefore, so long as Shelton and the Pension Trust Funds have the largest financial interest and will adequately represent the purported class they will be permitted to co-mingle their resources and serve as co-lead plaintiffs.

C. Largest Financial Interest

There does not seem to be a dispute between the movants regarding their respective financial interests. Shelton suffered a total loss of $1,078,602: $976,961 from shares of Fifth Third stock he acquired in the First Charter merger and $101,641 from his open market purchases of Fifth Third stock during the class period. The Pension Trust Funds suffered a loss of $829,349. Therefore, Shelton and the Pension Trust Funds suffered a combined loss of almost $2 million. The Eshe Fund Group suffered a combined loss of only $422,255. Clearly, Shelton and the Pension Trust Funds have the largest financial interest in obtaining relief from Fifth Third and related Defendants based on their alleged misrepresentations and omissions. Consequently, if Shelton and the Pension Trust Funds satisfy the requirements of Rule 23, they are the presumed co-lead plaintiffs under the PSLRA. If they fail to meet the requirements, then The Eshe Fund Group would become the presumed lead plaintiff since it has the second largest financial interest.

C. Rule 23: Typicality and Adequacy of Representation

Rule 23(a) requires a party seeking to serve as class representative to meet four requirements: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Fed.R.Civ.P. 23(a). But for purposes of determining the lead plaintiff under the PSLRA, only typicality and adequacy "directly address the personal characteristics of class representatives." *Cardinal Health*, 226 F.R.D. at 304 (citing *Lax v. Merch. Acceptance Corp.*, No. 97

C 2715, 97 C 2716, 97 C 2737, 97 C 2791, 97 C 3767, 97 C 4237, 97 C 4013, 97 C 4236, 1997 WL 461036, at *6 (N.D. Ill. Aug. 6, 1997)).

A plaintiff satisfies the typicality requirement if the claim "arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *In re American Medical Sys.*, 75 F.3d 1069, 1082 (6th Cir. 1996). In order to fairly and adequately represent the interests of the class, a plaintiff's interests cannot be antagonistic to those of the class it seeks to represent and plaintiff's counsel must be qualified to conduct the litigation. *Cardinal Health*, 226 F.R.D. at 304-05. As noted, any member of the purported class may rebut the fairness and adequacy of the presumed lead plaintiffs representation and argue that it will be subject to unique defenses.

1. Shelton & the Pension Trust Funds

The Eshe Fund Group argues that Shelton is not an adequate class representative because he originally moved to represent only the First Charter sub-class and because there is no evidence that he is a prominent businessman. In addition, the Eshe Fund Group argues that neither Shelton nor the Pension Trust Funds are adequate lead plaintiffs under the PSLRA because they failed to bring claims under the Securities Act. This Court does not find either argument compelling.

Although Mr. Shelton did not originally move to represent the entire proposed class, it does not mean that he fails to meet the typicality and adequacy requirements of Rule 23. The purportedly false and misleading statements and material omissions of Fifth Third are the basis of all claims in this consolidated case. Even if Shelton only had a claim in connection with the First Charter merger, that claim arises out of the same course of action as the remainder of the class. Therefore, Shelton's claims are typical of the class. In actuality, Shelton has a claim both as to the First Charter sub-class as well as to the open market sub-class. Additionally, since his initial filing, Shelton presented to this Court sufficient evidence of his willingness to serve in the role of lead plaintiff for the entire class.

The Eshe Fund Group's argument that Shelton lacks business sophistication holds little merit, if any. The attack on Shelton's business expertise is an attempt to prove that Shelton can not adequately represent the class because he is unfamiliar with the complexities of a private securities class action. Additionally, the argument is that, if the lead plaintiff lacks proper knowledge, class counsel will control the litigation. This Court is not persuaded that a lack of business sophistication alone destroys a movant's ability to adequately represent the class. Regardless, since the Court agrees to consider Shelton and the Pension Trust Funds as co-lead plaintiffs, any argument that Shelton is not well suited to serve as lead plaintiff due to his lack of experience in the field is offset by the great experience and expertise that the Pension Trust Funds hold in private securities litigation.

The Eshe Fund Group's next argument is that Shelton and the Pension Trust Funds bring claims only under the Exchange Act and fail to bring claims under the Securities Act. Under a Securities Act claim, the plaintiff need only prove that a material misstatement or omission occurred. *Huddleston v. MacLean Huddleston*, 459 U.S. 375, 381-82 (1983). On the other hand, a plaintiff filing a claim under the Exchange Act is required to prove scienter, reliance, causation, and privity. In addition, the analysis of damages is different.

The law is clear that a lead plaintiff does not have to have standing on every claim in order to satisfy the typicality or adequacy requirements of Rule 23. *Hevesi v. Citigroup, Inc.*, 366 F.3d 70, 82 (2d Cir. 2004) ("[B]ecause the PSLRA mandates that courts must choose a party who has, among other things, the largest financial stake in the outcome of the case, it is inevitable that, in some cases, the lead plaintiff will not have standing to sue on every claim) (citing *In re Initial Pub. Offering Sec. Litig.*, 214 F.R.D. 117, 123 (S.D.N.Y. 2002)). As noted by the Second Circuit in *Hevesi*, courts should be discouraged from cobbling together a group of plaintiffs so that a lead plaintiff has standing to sue on each claim asserted. 366 F.3d at 83 n.13.

Even though differences exist between the Securities Act and the Exchange Act claims, there

are similarities. For example, it will not necessarily harm the plaintiffs who have Securities Act claims to have a lead plaintiff with only Exchange Act claims. In that situation, the lead plaintiffs will attempt to present evidence well beyond the lower level of proof required of the Securities Act claims. In addition, even though the calculation of damages is different under the Securities Act and the Exchange Act, the determination of lead plaintiff under the PSLRA is not the correct time to consider these differences. *In re Tyco*, 2000 WL 1513772, at *8 ("While the potential for conflict based on the different remedies available to the § 10(b) and § 20A plaintiffs is real, the lead plaintiff determination is not the appropriate stage of litigation to address this concern.").

Under the present circumstances and at this stage of the litigation, this Court finds that Shelton and the Pension Trust Funds are able to adequately represent the purported class even though their individual claims are not under the Securities Act. For purposes of the PSLRA, the fact that Shelton and the Pension Trust Funds lack standing under the Securities Act does not rebut the presumption that they are adequate representatives of the class or that they will be subject to unique defenses. As noted above, a more in-depth analysis of Rule 23 is reserved for the class certification stage.

2. The Eshe Fund Group

Since the this Court appoints Shelton and the Pension Trust Funds as co-lead plaintiffs, the Eshe Fund Group asks that the Court appoint The Eshe Fund and Mr. Loewenstine, a member of the group, as lead plaintiffs for specific sub-classes. The Eshe Fund Group is particularly concerned with the two sub-classes of Preferred securities. At this stage, this Court does not find it necessary to appoint individual lead plaintiffs for each sub-class of investors. Appointing niche plaintiffs will fracture the litigation, making it more difficult for the lead plaintiff to control the litigation, hurting investors in the long-run. *In re Enron Sec. Litig.*, 206 F.R.D. 427, 451 (S.D. Tex. 2002).The Court

finds that the Pension Trust Funds and Shelton can adequately represent the Preferred B and Preferred C shareholders. As noted above, a lead plaintiff does not require standing to sue on each individual claim. Additionally, if a sincere problem of representation is present at the class certification stage, a representative may be appointed at that time.

E. Appointment of Lead Counsel

The PSLRA permits the lead plaintiffs to select the lead counsel of their choice. 15 U.S.C. § 77u-4(a)(3)(B)(v).

> The most adequate plaintiff shall, subject to the approval of this court, select and retain counsel to represent the class.

15 U.S.C. § 77u-4(a)(3)(B)(v). "Courts typically do not disturb a lead plaintiff's choice of counsel unless doing so is necessary to protect the interests of the class." *In re Cardinal Health*, 226 F.R.D. at 305 (citing *In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002)). Nothing in the record implies that the Lead Plaintiffs selection of counsel are inadequate or inexperienced to handle a large securities class action. Therefore, pursuant to the Joint Reply filed by the Lead Plaintiffs, the law firms of Coughlin Stoia and Berger & Montague are appointed Co-Lead Counsel with the Law Offices of Phyllis Brown, L.L.C. serving as local Liaison Counsel.

V. Conclusion

"Some reasonable solution that promotes both efficient litigation and protects investors from conflict of interests with antagonistic representatives must be found." *Enron*, 206 F.R.D. at 451. As a result, this Court finds that it is in the best interest of the entire class of Fifth Third investors to appoint as co-lead plaintiffs the Pension Trust Funds and Edwin B. Shelton. For the reasons stated above, the Court **GRANTS** the Pension Trust Funds and Edwin B. Shelton's request to serve as Co-Lead Plaintiffs and their selection of Co-Lead Counsel.

IT IS SO ORDERED

Date__December 16, 2008__

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Court