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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA GANIN., On Behalf of Herself
and All Others Similarly Situated,

Plaintiff,

-against-

CONSTELLATION ENERGY GROUP, INC.,
MAYO A. SHATTUCK III, KENNETH W.
DEFONTES, JR., E. FOLLIN SMITH,
DOUGLAS L. BECKER, JAMES T. BRADY,
JAMES R. CURTISS, FREEMAN A.
HRABOWSKI, III, NANCY LAMPTON,
ROBERT J. LAWLESS, LYNN M. MARTIN,
MICHAEL D. SULLIVAN, CITIGROUP
GLOBAL MARKETS INC., MERRILL
LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, MORGAN STANLEY &
CO., INCORPORATED, UBS SECURITIES
LLC and WACHOVIA CAPITAL MARKETS
LLC,

Defendants.

08 CIV 9755

AMD 09 CV 409

CIVIL ACTION NO.:

CLASS ACTION

COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

2008 FEB 12 PM 1:32
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff, Barbara Ganin, on behalf of herself and all other persons and entities similarly situated, by her undersigned attorneys, alleges upon personal knowledge as to herself and her own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through her attorneys, which included, among other things, a review of the documents filed with the Securities and Exchange Commission ("SEC"), announcements made by the defendants and press releases regarding Constellation Energy Group, Inc., ("Constellation Energy" or the "Company") and a review of other publicly available

information. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

PRELIMINARY STATEMENT

1. This is a class action brought by plaintiff on behalf of herself and a class consisting of all other persons and entities who purchased or otherwise acquired the Series A Junior Subordinated Debentures of Constellation Energy (hereinafter referred to as "Preferred Securities"), pursuant and/or traceable to the Company's materially false and misleading Registration Statement and Prospectus (collectively, the "Registration Statement") issued in connection with the Company's June 27, 2008 Preferred Securities offering ("Offering"), and who were damaged thereby.

2. Constellation is an energy company that conducts its business through various subsidiaries, including a merchant energy business and Baltimore Gas and Electric Company ("BGE"). The Company's merchant energy business provides energy solutions for customers while BGE is a regulated electric transmission and distribution utility company and a regulated gas distribution company in Baltimore and central Maryland. Constellation's non-regulated businesses design, construct and operate renewable energy, heating, cooling and cogeneration facilities for customers throughout North America as well as provide home improvements, service electric and gas appliances, service heating, air conditioning and plumbing to residential customers.

3. On June 27, 2008, defendants completed the Offering pursuant to a materially false and misleading Registration Statement, selling 18 million shares at \$25.00 per share (including an overallotment option granted to the underwriters to purchase up to an additional

\$67.5 million aggregate principal amount of Preferred Securities), for proceeds of approximately \$435.8 million (excluding the overallotment option).

4. Just six weeks later, analysts began questioning Constellation Energy's accounting. As *Associated Press* reported on August 12, 2008:

Shares of utility company Constellation Energy Group Inc. plunged Tuesday after analysts raised questions about some aspects of the company's accounting and the implication of a credit downgrade.

* * * * *

Jefferies & Co. analyst Paul Fremont upgraded Constellation stock to "Hold" from "Underperform" on Tuesday, but said in a note to clients that he is looking forward to company executives answering questions about some of its accounting practices at an Aug. 28 meeting in Baltimore.

In particular, Jefferies & Co. said it's puzzled by some of Constellation's characterizations of depreciation, cash flow and mark-to-market adjustment in recent financial material.

5. Then, on September 15, 2008, Constellation Energy investors and the market became aware of the Company's exposure to Lehman Brothers Holdings Inc.'s ("Lehman") bankruptcy, which impacted the Company's liquidity and affected the Company's ability to engage in energy-related trades.

6. On September 16, 2008, *Bloomberg.com* reported, in relevant part:

Constellation Energy Group, Inc. tumbled 36 percent to \$30.76. The biggest U.S. power marketer had the steepest drop in the S&P 500 on concern credit market turmoil will hurt the company's search for a partner to share the risk of its burgeoning energy trading business.

7. The Registration Statement contained untrue statements of material facts or omitted to state other facts necessary to make the statements made not misleading and were not prepared in accordance with the rules and regulations governing their preparation. The Registration Statement omitted the following material facts:

- (a) Defendants were inflating the Company's financial results by manipulating the characterization of depreciation expense which had the effect of inflating the Company's reported cash flows;
- (b) Constellation Energy's financial results were inflated by unrealistic assumptions which were reflected in mark-to-market accounting;
- (c) The Company understated the amount of its collateral obligations by as much as \$1.6 - \$1.8 billion; and
- (d) Constellation Energy's exposure to credit problems of its trading partners was much greater than represented including a key trading partner in Lehman, which was having severe financial problems.

JURISDICTION AND VENUE

8. The claims alleged herein arise under and pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77k, 771(a)(2) and 77o].

9. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act, [15 U.S.C. §77v] and 28 U.S.C. §1331.

10. Venue is proper in this District pursuant to Section 22 of the Securities Act and 28 U.S.C. §1391(b). Many of the acts and transactions alleged herein occurred in substantial part in this District and certain underwriter Defendants maintain their headquarters in this District.

11. In connection with the acts, transactions and conduct alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of the national securities exchanges.

THE PARTIES

12. Plaintiff, Barbara Ganin acquired the Preferred Securities of Constellation Energy, pursuant or traceable to the June 2008 Offering as set forth in the attached certification and has been damaged thereby.

13. Defendant Constellation Energy is an energy company that conducts its business through various subsidiaries, including a merchant energy company and BGE.

14. Defendant Mayo A. Shattuck III ("Shattuck") is President, Chief Executive Officer ("CEO") and Chairman of the Board of Constellation Energy. Shattuck signed or authorized the signing of the materially false and misleading Registration Statement.

15. Defendant Kenneth W. DeFontes, Jr. ("DeFontes") is President and CEO of BGE and Senior Vice President of Constellation Energy. DeFontes signed or authorized the signing of the materially false and misleading Registration Statement.

16. Defendant E. Follin Smith ("Smith") was a Senior Vice President and Chief Financial Officer ("CFO") from June 2001 until she retired from the Company in May 2007. Smith signed or authorized the signing of the materially false and misleading Registration Statement.

17. Defendant Douglas L. Becker ("Becker") has been a director of Constellation Energy since 1998. Becker signed or authorized the signing of the materially false and misleading Registration Statement.

18. Defendant James R. Curtiss ("Curtiss") has been a director of Constellation Energy since 1994. Curtiss signed or authorized the signing of the materially false and misleading Registration Statement.

19. Defendant James T. Brady (“Brady”) has been a director of Constellation Energy since 1998. Brady signed or authorized the signing of the materially false and misleading Registration Statement.

20. Defendant Freeman A. Hrabowski, III (“Hrabowski”) has been a director of Constellation Energy since 1994. Hrabowski signed or authorized the signing of the materially false and misleading Registration Statement.

21. Defendant Nancy Lampton (“Lampton”) has been a director of Constellation Energy since 1994. Lampton signed or authorized the signing of the materially false and misleading Registration Statement.

22. Defendant Robert J. Lawless (“Lawless”) has been a director of Constellation Energy since 2002. Lawless signed or authorized the signing of the materially false and misleading Registration Statement.

23. Defendant Lynn M. Martin (“Martin”) has been a director of Constellation Energy since 2003. Martin signed or authorized the signing of the materially false and misleading Registration Statement.

24. Defendant Michael D. Sullivan (“Sullivan”) has been a director of Constellation Energy since 1992. Sullivan signed or authorized the signing of the materially false and misleading Registration Statement.

25. The defendants referenced above in ¶¶14-24 are referred to herein as the “Individual Defendants.”

26. Defendant Citigroup Global Markets Inc. (“Citigroup”) acted as an underwriter in the sale of Preferred Securities for Constellation Energy’s Offering, drafting and disseminating the Offering documents.

27. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) acted as an underwriter in the sale of preferred securities for Constellation Energy’s Offering, drafting and disseminating the Offering documents.

28. Defendants Morgan Stanley & Co. Incorporated (“Morgan Stanley”) acted as an underwriter in the sale of preferred securities for Constellation Energy’s Offering, drafting and disseminating the Offering documents.

29. Defendant UBS Securities LLC (“UBS”) is the US investment banking and securities arm of UBS Investment Bank. UBS acted as an underwriter in the sale of preferred securities for Constellation Energy’s Offering, drafting and disseminating the Offering documents.

30. Defendant Wachovia Capital Markets LLC (“Wachovia Capital”) is the corporate and investment banking side of brokerage firm Wachovia Securities. Wachovia Capital acted as an underwriter in the sale of preferred securities for Constellation Energy’s Offering, drafting and disseminating the Offering documents.

31. The Defendants Citigroup, Merrill Lynch, Morgan Stanley, UBS and Wachovia Capital are collectively referred to herein as the “Underwriter Defendants.”

32. The Underwriter Defendants drafted and disseminated the Offering documents and received over \$14 million in fees in connection therewith. The Underwriter Defendants’ failure to conduct an adequate due diligence investigation was a substantial factor leading to the harm complained of herein.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of the Class consisting of all persons and entities who

purchased or otherwise acquired preferred shares of Constellation Energy on the Offering pursuant to and/or traceable to the false and misleading Registration Statement and were damaged thereby (the "Class"). Excluded are defendants, any entity in which defendants have a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns of defendants.

34. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes there are thousands of members of the Class.

35. Questions of law and fact are common to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether the Company issued materially false and misleading statements or omitted material facts in connection with the Offering; and
- (c) whether plaintiff and the other members of the Class have sustained damages and, if so, what is the proper measure of damages.

36. Plaintiff's claims are typical of the claims of the members of the Class as plaintiff and the other members of the Class each sustained damages arising out of the defendants' wrongful conduct in violation of federal law as complained of herein.

37. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class actions and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

38. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. Plaintiff anticipates no unusual difficulties in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

39. Constellation Energy is an energy company that conducts its business through various subsidiaries, including a merchant energy business and BGE. The Company's merchant energy business purportedly provides energy solutions for a variety of customers. BGE is a regulated electric transmission and distribution utility company and a regulated gas distribution utility company operating in Maryland.

THE FALSE AND MISLEADING REGISTRATION STATEMENT

40. On or about July 24, 2006, Constellation Energy filed with the SEC a "Shelf Registration Statement", or a Form S-3ASR (the "Registration Statement") which would later be utilized for the Offering. The Registration Statement incorporated by reference all subsequently filed prospectuses and the Company's subsequently issued public filings. The Company would

later issue a prospectus for the Offering pursuant to this Registration Statement which was materially misleading and omitted material facts regarding the Company's financial statements and risky financial exposure.

41. On January 30, 2008, Constellation Energy issued a press release entitled "Constellation Energy Reports Strong Fourth Quarter and Full Year 2007 Results." Constellation Energy noted significant progress on several important fronts. The press release stated in relevant part:

Constellation Energy today reported full year 2007 adjusted earnings of \$4.60 per share, up 27 percent from \$3.61 of adjusted earnings per share (EPS) for the full year 2006. These results were in line with management's guidance range of \$4.45 to \$4.65 per share, which was revised upward in October 2007. Adjusted earnings exclude the impact of special items, discontinued operations, certain economic, non-qualifying hedges and synfuel earnings. On a GAAP basis, the company earned \$4.50 per share in 2007, compared to \$5.16 per share earned in 2006, which included an after-tax gain of \$1.04 per share from discontinued operations.

For the fourth quarter of 2007, adjusted earnings of \$1.48 per share were up 37 percent, compared to \$1.08 per share earned in the same period last year. Reported GAAP earnings of \$1.42 per share in the fourth quarter of 2007 compare to \$2.22 per share in the fourth quarter of 2006, which included an after-tax gain of 76 cents from discontinued operations.

Constellation Energy reaffirmed earnings guidance for 2008 at \$5.25 to \$5.75 per share and expects to be in the middle to upper end of the range. Looking forward to 2009, the company expects to grow earnings 15 to 20 percent over projected 2008 earnings, representing an increase over the previously announced greater than 10 percent projected growth over 2008.

"2007 marked yet another outstanding year for our company as we grew adjusted earnings by 27 percent," said Mayo A. Shattuck III, chairman, president and chief executive officer of Constellation Energy. Our success in driving strong earnings continues to translate into significant total return for Constellation Energy shareholders. Considering both stock price appreciation and dividends, Constellation Energy delivered total shareholder return of 52 percent in 2007, following the 23 percent and 35 percent total shareholder returns realized over the last two years.

"Last year, we made significant progress on several important fronts, including our efforts to assume a leadership role in the potential renaissance of

new nuclear generation in the United States,” said Shattuck. “Along these lines, we formed our UniStar Nuclear Energy joint venture with EDF and continue to move forward with planned new development projects under the UniStar Nuclear Energy banner. We advanced the expansion of our Merchant capabilities by building the foundation to make significant, multi-year investments in generation to expand capacity and enhance reliability in Maryland, PJM and other markets we serve. Through several strategic acquisitions, we grew our wholesale load-serving business in the regulated Southeast market, added to our upstream gas reserves and expanded the geographic footprint of our retail gas operations in the Midwest market. We also have successfully implemented key components of several programs at Baltimore Gas and Electric (BGE) that provide customers with tools and incentives to better manage their energy usage.

“In coming years, we see clear and substantial earnings growth drivers and believe we are well positioned to deploy capital to pursue strategic market opportunities,” said Shattuck.

42. On February 27, 2008, Constellation Energy filed its fiscal year 2007 Form 10-K with the SEC which was incorporated by reference into the Registration Statement.

43. On April 30, 2008, Constellation Energy issued a press release entitled “Constellation Energy Reports Solid First Quarter 2008 Results.” The press release stated in relevant part:

Constellation Energy today reported adjusted earnings of \$0.95 per share for the first quarter of 2008, 8 percent lower than the \$1.03 adjusted earnings per share earned in the same period last year. Adjusted earnings exclude the impact of special items, discontinued operations, certain economic, non-qualifying hedges and synfuel earnings. On a Generally Accepted Accounting Principles (GAAP) basis, the company earned \$0.81 per share in the first quarter of 2008, compared to \$1.07 per share in the same period last year.

Constellation Energy reaffirmed earnings guidance for 2008 at \$5.25 to \$5.75 per share, and for 2009, the company expects to grow earnings 15 to 20 percent over projected 2008 earnings.

“We are pleased with our first quarter results, which were in line with our expectations and reflect solid operating performance,” said Mayo A. Shattuck III, chairman, president and chief executive officer of Constellation Energy. “We achieved several operational successes during the first quarter of 2008, including strong results from our generation fleet, driven by the roll-off of below-market hedges. Our Nuclear Group delivered particularly strong operating results, as we successfully completed planned outages and limited nuclear fleet forced outages to less than 3 days.

“During the first quarter, we continued to transact opportunistically. We purchased the Hillabee Energy Center for approximately \$155 million, which should be completed in 2010 at about 45 percent of the cost to build a new plant. This acquisition complements our roughly 3,100 megawatts of peak load in the Southeast, a growing area of our business. The addition of this generation asset continues to expand our growth strategy beyond competitive markets into regulated markets, while capitalizing on our expertise and extensive background in building and operating generating facilities. Consistent with our ‘Invest-Develop-Harvest’ strategy in upstream gas, we executed the sale of a non-operating interest in producing wells to Constellation Energy Partners, recognizing a gain of approximately \$14 million.”

44. On May 9, 2008, Constellation Energy filed its Form 10-Q for the first quarter of fiscal year 2008 (“Q1 Form 10-Q”) with the SEC. The Q1 Form 10-Q was incorporated by reference into the Registration Statement.

45. On or about June 23, 2008, Constellation Energy filed its Prospectus for the Offering (the “Offering Prospectus”), which forms part of the Offering Registration Statement and which became effective on June 27, 2008. Approximately 18 million shares were sold to the public at \$25.00 per share (including an over-allotment option granted to the underwriters to purchase up to an additional \$67.5 million aggregate principal amount of Preferred Securities), for proceeds of approximately \$435.8 million.

46. The Offering Registration Statement and Offering Prospectus contained false and misleading statements of material facts or omitted to state other facts necessary to make the statements made not misleading and were not prepared in accordance with the rules and regulations governing their preparation.

47. Regarding the risk to Constellation Energy’s business and operations from third parties or counter-party risk, the Offering Registration Statement and Offering Prospectus represented the following:

Exposure to counterparty performance. Constellation Energy’s merchant energy business enters into transactions with numerous third parties (commonly referred to as “counterparties”). In these arrangements, Constellation Energy is

exposed to the credit risks of Constellation Energy's counterparties and the risk that one or more counterparties may fail to perform under their obligations to make payments or deliver fuel or power. In addition, Constellation Energy enters into various wholesale transactions through Independent System Operators ("ISOs"). These ISOs are exposed to counterparty credit risks. Any losses relating to counterparty defaults impacting the ISOs are allocated to and borne by all other market participants in the ISO. These risks are enhanced during periods of commodity price fluctuations. Defaults by suppliers and other counterparties may adversely affect Constellation Energy's financial results.

The Registration Statement failed to disclose both the highly risky nature of Constellation Energy's merchant energy trading and, in particular, that it had materially misrepresented (in the Q1 Form 10-Q and the Registration Statement) the amount of the Company's collateral obligations by as much as \$1.6 – \$1.8 billion in the event of a ratings downgrade.

48. The Prospectus incorporated by reference Constellation Energy's other SEC filings, including its Form 10-Q for the first quarter of 2008 which represented that Constellation Energy had first quarter net income of \$145.7 million. The extent of Lehman's involvement as a counterparty, the understated amount of the Company's collateral obligations and its own financial problems was not disclosed in the Registration Statement and Prospectus.

49. On August 12, 2008, analysts began questioning the Company's accounting. On August 12, 2008, *The Associated Press* reported in relevant part that:

Shares of utility company Constellation Energy Group Inc. plunged Tuesday after analysts raised questions about some aspects of the company's accounting and the implications of a credit downgrade.

Constellation Energy stock shares fell \$11.79, or 16.1 percent, to close at \$61.25. Earlier in the session, the stock fell to \$57.10, its lowest level in more than a year. The shares have traded as high as \$107.97 in the past 52 weeks.

Jefferies & Co. analyst Paul Fremont upgraded Constellation stock to "Hold" from "Underperform" on Tuesday, but said in a note to clients that he is looking forward to company executives answering questions about some of its accounting practices at an Aug. 28 meeting in Baltimore.

In particular, Jefferies & Co. said it's puzzled by some of Constellation's characterizations of depreciation, cash flow and mark-to-market adjustments in recent financial material.

50. Also on August 12, 2008, *Forbes.com* published an article entitled "Constellation's Collateral Damage," which stated:

You just can't count on Constellation Energy Group's accounting.

The power producer shocked investors when it revealed that it had underestimated its potential liabilities in case of a ratings downgrade. You had to read all the way to page 46 of its quarterly report to find this out, but what the company said was that it had made an accounting error.

The company has contracts that require it to maintain certain credit ratings. If it is downgraded, it has to put aside money as collateral. It did not specify what the contracts were, other than to say they were in its merchant-energy business, which includes wholesale power sales and a grab-bag of other services, including "structured transactions and risk-management services," which sounds a lot like "exotic derivatives operations."

What it did say was that it had "incorrectly" omitted "certain contracts with downgrade provisions" the last time it looked at its obligations, which was at the end of the first quarter. If its triple-B-plus credit were to fall to junk status, admittedly an unlikely event, it could be on the hook for \$3.4 billion in extra collateral. In March, that number would have been \$3.2 billion, but the company calculated it as \$1.6 billion.

Lesser downgrades would result in smaller increases in collateral obligations.

The revelation was contained in the company's quarterly report filed with the Securities and Exchange Commission on Monday. On Tuesday, Constellation shares tumbled 16.1%, or \$11.79, to \$61.25.

Deutsche Bank analyst John Kiani said that it's fairly unlikely Constellation Energy Group will be downgraded to junk given its strong balance sheet and current profitability forecast. But Kiani is concerned that Constellation's \$3.4 billion cumulative obligation is higher than his \$3.3 billion estimate of the company's liquidity, which highlights Constellation's need to maintain an investment-grade profile.

Kiani maintains his "hold" rating on the stock with a \$94 price target.

At Jefferies, analyst Paul Fremont upgraded Constellation, the parent of Baltimore Gas & Electric, to "hold" from "underperform." Fremont said he is looking forward to the company providing answers to accounting questions at its Aug. 28

analyst meeting. He questioned apparent discrepancies between the company's depreciation in its income statements and cash-flow statements.

As for the miscalculation of collateral liabilities Fremont said the question that arose is what would cause Constellation to understate them by such a significant amount in the first quarter and what would cause the company to have contracts that would require these huge amounts of collateral.

"Most likely I think it relates to trading, which is an area I think investors feel less comfortable with understanding what drives those operations," he said. Constellation buys and sells commodities like power, gas and coal.

51. Regarding Constellation Energy's adjustments to depreciation, merchant EBITDA and mark-to-market adjustments, Jefferies & Co. report stated in relevant part:

Among the accounting questions that continue to puzzle us is the company's characterization of depreciation. Page 26 of the company's Q108 presentation and page 24 of its Q208 presentation indicate a starting point for 6-month depreciation of \$288 million (\$146 million in the 1Q presentation and \$142 million in 2Q which is consistent with the June 2008 10Q income statement depreciation number of \$290.2 million). In the June 2008 Constellation 10Q, the income statement depreciation number is \$50 million higher than the \$240.5 million cash flow depreciation. Yet the adjustments outlined on pages 24 and 26 are all positive, adding to cash flow (roughly \$50 million each quarter). The company fails to explain the negative adjustment, which accounts for the \$50 million difference between the cash flow statement and the income statement.

- These unexplained adjustments to depreciation carry through to the company's characterization of cash flow in slide 20 of the Q1 presentation and slide 19 of the Q2 presentation versus cash flow from operations in the company's 10Q. The cash flow numbers in the slides (\$262 million and \$474 million, respectively) are \$203 million higher than net cash provided by operating activities (\$533.4 million) on page 6 of the 10Q.
- And to company's characterization of Merchant EBITDA. Merchant EBITDA numbers on slide 25 of Q1 and slide 23 of Q2 total \$874 million (\$275 million in Q1 and \$599 million in Q2) versus \$533.4 million in net cash provided by operating activities for the consolidated total company as reported in the 10Q. This represents an unexplained difference of \$340.6 million excluding the utility's EBITDA (which amounted to roughly \$128 million in the company's 10Q).
- Finally we would like to better understand the mark-to-market adjustments (included by the company in adjusted EPS) reported in

the second quarter 2008. Total mark-to-market results increased \$248.6 million during the quarter ended June 30, 2008, primarily due to an increase in origination gains of \$7.3 million and higher gains from unrealized changes in fair value of \$241.3 million. The increase in gains from unrealized changes in fair value was primarily due to approximately \$300 million in higher gains on open positions in our portfolio management and trading business during the quarter. In addition to the \$248.6 million contribution during the quarter of mark-to-market gains, the company added roughly \$57 million of mark-to-market losses on non-qualifying hedges to its adjusted EPS calculation for the quarter. It would appear as if the company's adjusted EPS includes at least \$300 million of mark-to-market contribution. We would be interested in understanding the source of these mark-to-market gains.

52. On September 15, 2008, Constellation Energy investors and the market became aware of Constellation Energy's exposure to Lehman's bankruptcy, which negatively impacted Constellation Energy's ability to engage in energy-related trades.

53. On September 16, 2008, *Bloomberg.com* reported that Constellation Energy had the steepest drop in the S&P 500 that day, on concern credit market turmoil will hurt the Company's search for a partner to share the risk of its burgeoning energy-trading business.

54. The Registration Statement contained untrue statements of material facts or omitted to state other facts necessary to make the statements made not misleading and were not prepared in accordance with the rules and regulations governing their preparation. The Registration Statement omitted the following material facts:

- (a) Defendants were inflating the Company's financial results by manipulating the characterization of depreciation expense which had the effect of inflating the Company's reported cash flows;
- (b) Constellation Energy's financial results were inflated by unrealistic assumptions which were reflected in mark-to-market accounting;
- (c) The Company understated the amount of its collateral obligations by as

much as \$1.6 - \$1.8 billion; and

- (d) Constellation Energy's exposure to credit problems of its trading partners was much greater than represented including a key trading partner in Lehman, which was having severe financial problems.

COUNT I
VIOLATION OF SECTION 11 OF THE
SECURITIES ACT AGAINST ALL DEFENDANTS

55. Plaintiff repeats and reiterates each and every allegation contained above, as if fully set forth herein.

56. This claim is brought by plaintiff, on behalf of herself and other members of the Class, who purchased Constellation Energy's Preferred Securities pursuant and/or traceable to the Registration Statement. Each Class member acquired their securities pursuant and/or traceable to the Registration Statement.

57. As detailed above, the Registration Statement contained false and misleading statements or omitted material facts required to be stated or necessary to make the statements not misleading.

58. Constellation Energy is the issuer of the Preferred Securities sold via the Registration statement. As issuer of the securities, the Company is strictly liable to plaintiff and the Class for the material misstatements and omissions therein.

59. The Individual Defendants, as signatories to the Registration Statement, as directors, and/or officers and controlling persons of the issuer, owed to the holders of Constellation Energy Preferred Securities obtained through the Registration Statement the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement at the time they become effective to ensure that such statements were true and correct

and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading. The Individual Defendants and Underwriter Defendants failed to exercise reasonable care in connection with issuing the Registration Statement for the Offering. As such, the Individual Defendants and Underwriter Defendants are liable to the Class.

60. The Individual Defendants and Underwriter Defendants did not make a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Registration Statement were true or that there was no omission of material facts necessary to make the statements made therein not misleading.

61. At the time they obtained their Constellation Energy Preferred Securities, the plaintiff and members of the Class did so without knowledge of the facts concerning the misstatements or omissions alleged herein.

62. This action is brought within one year after discovery of the untrue statements and omissions in and from the Registration Statement should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Registration Statement.

63. By virtue of the foregoing, plaintiff and the other members of the class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from Constellation Energy, the Individual Defendants and Underwriter Defendants, jointly and severally.

COUNT II

VIOLATIONS OF SECTION 12(a)(2) OF THE SECURITIES ACT AGAINST CONSTELLATION ENERGY AND THE UNDERWRITER DEFENDANTS

64. Plaintiff repeats and reiterates each and every allegation contained above, as if fully set forth herein.

65. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against Constellation Energy and the Underwriter Defendants.

66. Constellation Energy and the Underwriter Defendants were sellers and offerors and/or solicitors of purchasers of the securities offered pursuant to the false and misleading Prospectus.

67. The Prospectus contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading and concealed and failed to disclose material facts. Constellation Energy and the Underwriter Defendants' actions of solicitation included participating in the preparation and dissemination of the false and misleading Prospectus.

68. Constellation Energy and the Underwriter Defendants owed to the purchasers of Constellation Energy Preferred Securities, including plaintiff and other class members, the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus, including the Prospectus to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading.

69. Plaintiff did not know, or in the exercise of reasonable diligence could have known, of the untruths and omissions contained in the Prospectus.

COUNT III
VIOLATION OF SECTION 15 OF THE
SECURITIES ACT AGAINST CONSTELLATION ENERGY
AND THE INDIVIDUAL DEFENDANTS

70. Plaintiff repeats and realleges each and every allegation contained in above, as if fully set forth herein.

71. This count is asserted against Constellation Energy and the Individual Defendants and is based upon Section 15 of the Securities Act.

72. Constellation Energy and the Individual Defendants, by virtue of their stock ownership, offices, directorships and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Constellation Energy. Constellation Energy and the Individual Defendants had the power and influence and exercised the same to cause Constellation Energy to engage in the acts described herein.

73. By virtue of the misconduct alleged herein, and the primary violation of Sections 11 and 12 of the Securities Act, Constellation Energy and the Individual Defendants are liable as “control persons” to the plaintiff and the Class for damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on her own behalf and on behalf of the Class, prays for judgment as follows:

(a) Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

(b) Awarding plaintiff and the other members of the Class damages in an amount that may be proven at trial, together with interest thereon;

(c) Awarding plaintiff and other class members rescission on their Section 12(a)(2) claim;

(d) Awarding plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys’ and experts’ witness fees and other costs; and

(e) Such other relief as this Court deems appropriate.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: November 12, 2008

Respectfully submitted,

By:



**ZWERLING, SCHACHTER
& ZWERLING, LLP**

Richard A. Speirs (RS8872)
Shaye J. Fuchs (SF9412)
41 Madison Avenue-32nd Floor
New York, NY 10010
Tel.: (212) 223-3900
Fax: (212) 371-5969

CRIDEN & LOVE, P.A.

Michael E. Criden
Kevin B. Love
7301 S.W. 57 Court
Suite 515
South Miami, FL 33143
Tel.: (305) 357-9000
Fax: (305) 357-9050

Attorneys for Plaintiff

CERTIFICATION

Barbara Ganin, Individually (Plaintiff), hereby certifies that the following is true and correct to the best of her knowledge, information and belief;

1. I have reviewed the complaint regarding Constellation Energy Group, Inc. (the "Complaint"), and I have authorized Zwerling, Schachter & Zwerling, LLP to file it on my behalf.

2. I am willing to serve as a representative party on behalf of the class (the "Class") as defined in the Complaint, including providing testimony at deposition and trial, if necessary.

3. Plaintiff's transactions in the security that is the subject of this action are as follows: purchased 1,000 preferred shares of the common stock of Constellation Energy Group, Inc on June 20, 2008, at \$25.00 per share and sold the 1,000 preferred shares on September 16, 2008 at \$19.33.

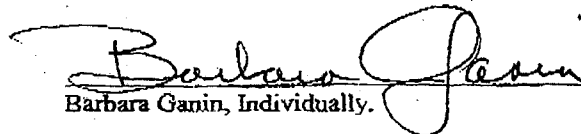
4. I did not purchase these securities at the direction of my counsel, or in order to participate in this private action.

5. During the three year period preceding the date of my signing the Certification, I have not sought to serve nor served as a representative in any action arising under the Federal Securities Laws.

6. I will not accept any payment for serving as a representative party on behalf of the Class beyond my *pro rata* of any possible recovery, except for an award, as ordered or approved by the court, for reasonable costs and expenses (including lost wages) directly relating to my representation of the Class.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: October 31, 2008


Barbara Ganin, Individually.

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
CLOSED, ECF, RELATED

2009 FEB 18 A 11:11

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:08-cv-09755-WHP AT BALTIMORE

Internal Use Only

BY _____ DEPUTY
AMD 09 CV 409


Ganin et al v. Constellation Energy Group, Inc. et al
Assigned to: Judge William H. Pauley, III
Related Case: 1:08-cv-08185-WHP
Cause: 15:77 Securities Fraud

Date Filed: 11/12/2008
Date Terminated: 02/13/2009
Jury Demand: Plaintiff
Nature of Suit: 850
Securities/Commodities
Jurisdiction: Federal Question

Plaintiff

Barbara Ganin
on behalf of herself

represented by **Richard A Speirs**
Zwerling, Schachter & Zwerling
(Madison Avenue)
41 Madison Avenue
New York , NY 10010
212-223-3900
Fax: 212-371-5969
Email: rspeirs@zsz.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

A CERTIFIED COPY
J. MICHAEL McMAHON, **CLERK**
BY _____


Shaye J Fuchs
Zwerling, Schachter & Zwerling,
LLP(Uniondale)
41 Madison Avenue
32nd floor
New York , NY 10010
(212) 223-3900
Email: sfuchs@zsz.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Barbara Ganin
on behalf of all others similarly situated

represented by **Richard A Speirs**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Shaye J Fuchs
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Constellation Energy Group, Inc.

represented by **Brant Warren Bishop**
Kirkland & Ellis LLP (Washington)
655 Fifteenth Street NW, Suite 1200
Washington , DC 20005
(202)-879-5067
Fax: (202)-879-5200
Email: bbishop@kirkland.com
ATTORNEY TO BE NOTICED

James Philip Gillespie
Kirkland & Ellis LLP (Washington)
655 Fifteenth Street NW, Suite 1200
Washington , DC 20005
(202)-879-5190
Fax: (202)-879-5200
Email: jgillespie@kirkland.com
ATTORNEY TO BE NOTICED

Defendant

Mayo A. Shattuck, III

represented by **John J. Clarke , Jr**
DLA Piper US LLP (NY)
1251 Avenue of the Americas
New York , NY 10020
(212) 335-4500
Fax: (212) 335-4501
Email: john.clarke@dlapiper.com
ATTORNEY TO BE NOTICED

Defendant

Kenneth W. Defontes, Jr.

represented by **John J. Clarke , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Follin E. Smith

represented by **John J. Clarke , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Douglas L. Becker

represented by **John J. Clarke , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**James T. Brady**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****James R. Curtiss**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Freeman A. Hrabowski, III**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Nancy Lampton**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Robert J. Lawless**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Lynn M. Martin**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Michael D. Sullivan**represented by **John J. Clarke , Jr**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Citigroup Global Markets Inc.**represented by **George Arnold Schieren**
Clifford Chance US, LLP (NYC)
31 West 52nd Street
New York , NY 10019
(212) 878-3283
Fax: (212) 878-8375
Email:
George.Schieren@cliffordchance.com
LEAD ATTORNEY
*ATTORNEY TO BE NOTICED***Laura Jane McLaren**

Clifford Chance US, LLP (NYC)
31 West 52nd Street
New York , NY 10019
(212)-878-3445
Fax: (212)-878-8375
Email:
laura.mclaren@cliffordchance.com
ATTORNEY TO BE NOTICED

Mark Holland
Clifford Chance US, LLP (NYC)
31 West 52nd Street
New York , NY 10019
(212)-878-8432
Fax: (212)-878-8375
Email:
mark.holland@cliffordchance.com
ATTORNEY TO BE NOTICED

Robert Gene Houck
Clifford Chance US, LLP (NYC)
31 West 52nd Street
New York , NY 10019
(212)-878-3224
Fax: (212)-878-8375
Email:
robert.houck@cliffordchance.com
ATTORNEY TO BE NOTICED

Defendant

Merrill Lynch, Pierce, Fenner & Smith Incorporated

represented by **George Arnold Schieren**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Jane McLaren
(See above for address)
ATTORNEY TO BE NOTICED

Mark Holland
(See above for address)
ATTORNEY TO BE NOTICED

Robert Gene Houck
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Morgan Stanley & Co., Incorporated

represented by **George Arnold Schieren**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Jane McLaren
(See above for address)
ATTORNEY TO BE NOTICED

Mark Holland
(See above for address)
ATTORNEY TO BE NOTICED

Robert Gene Houck
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

UBS Securities L.L.C.

represented by **George Arnold Schieren**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Jane McLaren
(See above for address)
ATTORNEY TO BE NOTICED

Mark Holland
(See above for address)
ATTORNEY TO BE NOTICED

Robert Gene Houck
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Wachovia Capital Markets L.L.C.

represented by **George Arnold Schieren**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Jane McLaren
(See above for address)
ATTORNEY TO BE NOTICED

Mark Holland
(See above for address)
ATTORNEY TO BE NOTICED

Robert Gene Houck
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/12/2008	<u>1</u>	COMPLAINT against Follin E. Smith, Douglas L. Becker, James T. Brady, James R. Curtiss, Freeman A. Hrabowski, III, Nancy Lampton, Robert J. Lawless, Lynn M. Martin, Michael D. Sullivan, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated, UBS Securities L.L.C., Wachovia Capital Markets L.L.C., Constellation Energy Group, Inc., Mayo A. Shattuck, III, Kenneth W. Defontes, Jr. (Filing Fee \$ 350.00, Receipt Number 668678) Document filed by Barbara Ganin(on behalf of herself), Barbara Ganin(on behalf of all others similarly situated).(laq) (Entered: 11/18/2008)
11/12/2008		SUMMONS ISSUED as to Follin E. Smith, Douglas L. Becker, James T. Brady, James R. Curtiss, Freeman A. Hrabowski, III, Nancy Lampton, Robert J. Lawless, Lynn M. Martin, Michael D. Sullivan, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated, UBS Securities L.L.C., Wachovia Capital Markets L.L.C., Constellation Energy Group, Inc., Mayo A. Shattuck, III, Kenneth W. Defontes, Jr. (laq) (Entered: 11/18/2008)
11/12/2008		CASE REFERRED TO Judge William H. Pauley as possibly related to 1:08-cv-8185. (laq) (Entered: 11/18/2008)
11/12/2008		Case Designated ECF. (laq) (Entered: 11/18/2008)
11/21/2008	<u>2</u>	NOTICE OF APPEARANCE by John J. Clarke, Jr on behalf of Follin E. Smith, Douglas L. Becker, James T. Brady, James R. Curtiss, Freeman A. Hrabowski, III, Nancy Lampton, Robert J. Lawless, Lynn M. Martin, Michael D. Sullivan, Mayo A. Shattuck, III, Kenneth W. Defontes, Jr (Clarke, John) (Entered: 11/21/2008)
11/21/2008	<u>3</u>	MOTION to Appoint Barbara Ganin to serve as lead plaintiff(s). Document filed by Barbara Ganin(on behalf of all others similarly situated).(Speirs, Richard) (Entered: 11/21/2008)
11/21/2008	<u>4</u>	MEMORANDUM OF LAW in Support re: <u>3</u> MOTION to Appoint Barbara Ganin to serve as lead plaintiff(s).. Document filed by Barbara Ganin(on behalf of all others similarly situated). (Speirs, Richard) (Entered: 11/21/2008)
11/21/2008	<u>5</u>	AFFIDAVIT of Richard A. Speirs in Support re: <u>3</u> MOTION to Appoint Barbara Ganin to serve as lead plaintiff(s).. Document filed by Barbara Ganin(on behalf of all others similarly situated). (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Speirs, Richard) (Entered: 11/21/2008)
11/21/2008	<u>6</u>	CERTIFICATE OF SERVICE. Document filed by Barbara Ganin(on behalf of all others similarly situated). (Speirs, Richard) (Entered: 11/21/2008)

11/24/2008	<u>7</u>	ENDORSED LETTER addressed to Judge William H. Pauley from Richard Speirs dated 11/21/08 re: Request that the Court waive the premotion conference. ENDORSEMENT: Application granted. (Signed by Judge William H. Pauley, III on 11/24/08) (cd) (Entered: 11/25/2008)
11/24/2008	<u>8</u>	STIPULATION AND ORDER FOR EXTENSION OF TIME that the time for defendants to answer shall be tolled pending a decision on any motion for consolidation, and pending appointment of lead plaintiff and lead counsel, and as further set forth in this document. (Signed by Judge William H. Pauley, III on 11/24/08) (cd) (Entered: 11/25/2008)
12/03/2008		CASE ACCEPTED AS RELATED. Create association to 1:08-cv-08185-WHP. Notice of Assignment to follow. (rdz) (Entered: 12/11/2008)
12/03/2008	<u>10</u>	NOTICE OF CASE ASSIGNMENT to Judge William H. Pauley, III. (rdz) (Entered: 12/11/2008)
12/03/2008		Magistrate Judge Frank Mass is so designated. (rdz) (Entered: 12/11/2008)
12/11/2008	<u>9</u>	ENDORSED LETTER addressed to Judge William H. Pauley, III from Brant W. Bishop dated 12/3/2008 re: Counsel for defendants writes respectfully requesting a pre-motion conference prior to the filing of defendants' joint motion to transfer the above-captioned cases. ENDORSEMENT: Application granted. This Court will hold a pre-motion conference on 12/18/2008 at 10:45 a.m. SO ORDERED. (Signed by Judge William H. Pauley, III on 12/10/2008) (tve) (Entered: 12/11/2008)
12/12/2008	<u>11</u>	MEMORANDUM OF LAW in Opposition re: <u>3</u> MOTION to Appoint Barbara Ganin to serve as lead plaintiff(s). <i>Opposition filed in response to competing lead plaintiff motions filed under related case 08-cv-8185.</i> Document filed by Barbara Ganin(on behalf of herself). (Attachments: # <u>1</u> Certificate of Service) (Speirs, Richard) (Entered: 12/12/2008)
12/17/2008	<u>12</u>	ENDORSED LETTER: addressed to Judge William H. Pauley from James M. Hughes dated 12/16/08 re: Counsel for plaintiff requests that it be possible to attend or listen in on the conference set for 12/18/08 at 10:45 a.m. ENDORSEMENT: Application Denied. So Ordered. (Signed by Judge William H. Pauley, III on 12/17/08) (js) (Entered: 12/18/2008)
12/18/2008	<u>13</u>	NOTICE OF APPEARANCE by Brant Warren Bishop on behalf of Constellation Energy Group, Inc. (Bishop, Brant) (Entered: 12/18/2008)
12/18/2008	<u>14</u>	NOTICE OF APPEARANCE by James Philip Gillespie on behalf of Constellation Energy Group, Inc. (Gillespie, James) (Entered: 12/18/2008)
12/18/2008	<u>15</u>	NOTICE OF APPEARANCE by George Arnold Schieren on behalf of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated, UBS Securities L.L.C., Wachovia Capital Markets L.L.C. (Schieren, George) (Entered: 12/18/2008)
12/18/2008	<u>16</u>	NOTICE OF APPEARANCE by Mark Holland on behalf of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated, UBS Securities L.L.C., Wachovia Capital Markets

		L.L.C. (Holland, Mark) (Entered: 12/18/2008)
12/18/2008	<u>17</u>	NOTICE OF APPEARANCE by Robert Gene Houck on behalf of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated, UBS Securities L.L.C., Wachovia Capital Markets L.L.C. (Houck, Robert) (Entered: 12/18/2008)
12/18/2008	<u>18</u>	NOTICE OF APPEARANCE by Laura Jane McLaren on behalf of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated, UBS Securities L.L.C., Wachovia Capital Markets L.L.C. (McLaren, Laura) (Entered: 12/18/2008)
12/22/2008	<u>19</u>	REPLY to Response to Motion re: <u>3</u> MOTION to Appoint Barbara Ganin to serve as lead plaintiff(s).. Document filed by Barbara Ganin(on behalf of herself). (Speirs, Richard) (Entered: 12/22/2008)
12/22/2008	<u>20</u>	CERTIFICATE OF SERVICE. Document filed by Barbara Ganin(on behalf of herself). (Speirs, Richard) (Entered: 12/22/2008)
02/13/2009	<u>21</u>	ORDER: For the reasons set forth on the record on February 13,2009, Defendants' motion to transfer these actions to the District of Maryland pursuant to 28 USC § 1404(a) is granted. The Clerk of the Court is directed to transfer these actions to the District of Maryland. (Signed by Judge William H. Pauley, III on 2/13/09) (db) (Entered: 02/13/2009)
02/13/2009		CASE TRANSFERRED OUT from the U.S.D.C. Southern District of New York to the United States District Court - District of Maryland. Sent original file along with documents numbered 1-21, certified copy of docket entries and transfer order. Mailed via Federal Express AIRBILL # 8671 3373 3626 on 2/17/09. (db) (Entered: 02/13/2009)

your copy

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

Date: February 17, 2009

Our case # **08cv9755-WHP**
Case Name: Ganin, et al v. Constellation Energy Group, Inc., et al

Dear Sir or Madam:

Enclosed is a certified copy of the civil docket sheet, for the above referenced case that is being transferred from the United States District Court S.D.N.Y. – **District of Maryland**. The case file can be accessed through our CM/ECF System for the Southern District of New York. Please contact Ms. Martine Jocelyn at (212) 805- 0136 and she will furnish you with a CM/ECF Login and Password.

The enclosed copy of this letter is for your convenience in acknowledging receipt of these documents.

****Court policy for USDC-SDNY states that all ECF actions require only original, manual paper filings for the initiating documents. You may access our CM/ECF website for any additional documents that your court may require for processing.****

Yours truly,

J. Michael McMahon
Clerk of Court

D. Boneta
Deputy Clerk

mro

Fed Ex Air bill # 8671 3373 3626

**RECEIPT IS ACKNOWLEDGED OF THE DOCUMENTS DESCRIBED HEREIN
AND, ASSIGNED CASE NUMBER:**

CASE # AMD 09 CV 409 ON DATE: 2/18/09

CASE TRANSFERRED OUT FORM