

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNIFER J. FADEM, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ELECTRONIC DATA SYSTEMS CORP.,
RICHARD H. BROWN and PAUL J.
CHIAPPARONE

Defendants.

Case No. 02 CV 7738 (DAB)

SECURITIES CLASS ACTION

STATEMENT OF NEW JERSEY
CONCERNING MOTIONS FOR
APPOINTMENT AS LEAD PLAINTIFF
PURSUANT TO SECTION 21D(a)(3)(B)
OF THE SECURITIES EXCHANGE ACT
OF 1934

HENRY SPITZER, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

ELECTRONIC DATA SYSTEMS CORP.,
RICHARD H. BROWN and PAUL J.
CHIAPPARONE

Defendants.

Case No. 02 CV 7852

SAMUEL ZAKS, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

ELECTRONIC DATA SYSTEMS CORP.,
RICHARD H. BROWN and PAUL J.
CHIAPPARONE

Defendants.

Case No. 02 CV 7970

VLADIMIR SPIRA, M.D. on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ELECTRONIC DATA SYSTEMS CORP.,
RICHARD H. BROWN and PAUL J.
CHIAPPARONE

Defendants.

Case No. 02 CV 7997

STEPHEN A. GOLDBERG, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ELECTRONIC DATA SYSTEMS CORP.,
RICHARD H. BROWN and PAUL J.
CHIAPPARONE

Defendants.

Case No. 02 CV 8332

The Department of the Treasury of the State of New Jersey and its Division of Investment, on behalf of Common Pension Fund A ("New Jersey"), respectfully submits this statement concerning motions for appointment as lead plaintiff in the above-captioned securities fraud class actions pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4(a) *et seq.*; 77z-1(a) *et seq.*, (the "Reform Act"). For the reasons set forth below, New Jersey, a public pension fund which suffered losses in connection with these actions in excess of \$50 million, requests that the Court defer ruling on any motion for appointment of lead plaintiff until this matter is resolved by the United States District Court for the Eastern District of Texas, where these cases are likely to be transferred and litigated.

These cases uniformly allege that Electronic Data Systems Corporation (“EDS” or the “Company”), a Delaware corporation with its principal place of business in Plano, Texas, violated Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) through the issuance of a series of materially false and misleading statements between September 7, 1999 and September 24, 2002 (the “Class Period”). On September 26, 2002, the first of 17 cases alleging violations of the Exchange Act were filed in the Eastern District of Texas, where the Company’s principal place of business is located. On the same day, the first of five identically worded complaints were filed in this District, asserting the same claims set forth in the Texas actions based upon the same set of facts, and on behalf of the same Class. The only basis for venue asserted in these complaints is the bare allegation that “defendants conduct business in this District, EDS’s stock is listed on the New York Stock Exchange, and certain of the wrongful acts alleged herein took place or originated in this District.” The complaints do not even allege that the named plaintiffs reside within the District.

The Reform Act provides for the Court to appoint as lead plaintiff in securities fraud class actions the movant with the largest financial interest in the relief sought by the class who otherwise satisfies the requirements of Fed. R. Civ. P. 23. New Jersey is a public pension fund which suffered losses in excess of \$50 million as a result of the wrongful conduct alleged in these actions, and has moved in the Eastern District of Texas to be appointed lead plaintiff. (A copy of New Jersey’s moving papers is annexed hereto as Exhibits A and B).¹ Accordingly, New Jersey believes that it

¹ New Jersey’s moving papers include the following: (i) Notice of Motion and Memorandum of Points and Authorities in Support of New Jersey’s Motion to be Appointed Lead Plaintiff Pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 and to Approve Proposed Lead Plaintiff’s Choice of Counsel (annexed hereto as Exhibit A); and (ii) Declaration of Robert S. Gans in Support of the Motion of the New Jersey to Be Appointed Lead Plaintiff Pursuant to § 21D(a)(3)(B) of the Securities Exchange Act of 1934 and to Approve Proposed Lead Plaintiff’s Choice of Counsel (annexed hereto as Exhibit B).

is the “most adequate plaintiff” as defined under the Reform Act, and will therefore be appointed Lead Plaintiff to oversee this litigation.

Permitting lead plaintiff motions to proceed in this District based upon the five “cookie-cutter” complaints on file would undermine a critical component of the Reform Act: the coordination of all related securities class action litigation in a single forum under the direction of unified, competent leadership. Courts have uniformly recognized that an overriding purpose of the Reform Act is to prevent the sort of fragmented litigation that would occur if plaintiffs were permitted to circumvent the lead plaintiff provisions by filing related cases in judicial districts with only a tenuous connection to the Actions. *See, e.g., In re Enron Corp. Sec. Litig.*, 206 F.R.D. 427, 451 (S.D. Tex. 2002) (“the Court believes that the litigation should proceed as a unified class with a strong Lead Plaintiff”); *In re Orbital Sciences Corp. Secs. Litig.*, 188 F.R.D. 237, 240 (E.D. Va. 1999) (appointing single lead plaintiff and lead counsel to oversee consolidated securities fraud class actions over objections of competing movants on grounds that “[t]he operative effect of consolidating the two lawsuits in form but not in fact would . . . be to destroy the opportunity for Lead Counsel to manage either case.”).²

New Jersey believes that the above-captioned cases should properly be heard in the Eastern

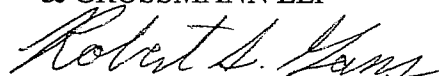
² Recently, the law firm of Lovell Stewart Halebian, LLP, which filed two of the five above-captioned actions, attempted a similar end-run around the lead plaintiff provisions of the Reform Act in this Court. In *LeCocq v. Peregrine Systems, Inc., et al.*, No. 02 Civ 3577, the firm filed a complaint and pressed a lead plaintiff motion in a securities fraud class action involving Peregrine, despite the fact that the defendants were located in California, 32 complaints asserting the same claims on behalf of the same class had already been filed and consolidated in the Southern District of California, lead plaintiff motions were pending in that District, and the lead plaintiff movants and defendants had filed joint motions to transfer the New York action to California. Despite this vigorous opposition, Lovell Stewart has continued to oppose transfer and pursue its lead plaintiff motion.

District of Texas, and will file a motion to transfer pursuant to 28 U.S.C. § 1404(a) at the appropriate time. Therefore, New Jersey respectfully requests that the Court defer entertaining any motion for appointment of lead plaintiffs in these Actions until a lead plaintiff is appointed by the United States District Court for the Eastern District of Texas and a motion to transfer can be heard. Alternatively, should the Court determine to hear any lead plaintiff motions now, New Jersey hereby moves to be appointed Lead Plaintiff and for approval of its choice of counsel and relies upon the Notice of Motion and Memorandum of Points and Authorities and the Declaration by Robert S. Gans attached hereto as Exhibits A and B, respectively.

Dated: November 22, 2002

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP



ALAN SCHULMAN
ROBERT S. GANS (RG-2391)
12544 High Bluff Drive, Suite 150
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323

-and-

EDWARD A. GROSSMANN (EG-6675)
JAVIER BLEICHMAR (JB-0435)
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

GREENBAUM, ROWE, SMITH, RAVIN,
DAVIS & HIMMEL, LLP
PAUL A. ROWE
MICHAEL B. HIMMEL
99 Wood Avenue South
Woodbridge, NJ 07095
Tel: (732) 549-5600
Fax: (732) 549-1881

Attorneys for New Jersey