

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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|--------------------------|---|------------------------------|
| BANKERS' BANK NORTHEAST, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Docket no. 1:12-cv-00127-GZS |
| |) | |
| EVERETT L. AYER, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

ORDER ON MOTION TO AMEND

Before the Court is Plaintiff's Motion to Amend the Complaint (ECF No. 168). For reasons briefly explained herein, the Court GRANTS the Motion.

In this case, Plaintiff claims the Defendants engaged in negligent misrepresentation and professional malpractice in connection with an \$18 million loan Plaintiff made to the Savings Bank of Maine ("SBM") on September 16, 2008 (the "Loan"). By this Motion, Plaintiff Banker's Bank Northeast ("BBN") seeks to amend its Complaint to add as plaintiffs nine community banks (collectively with BBN, the "Consortium") that jointly participated, with BBN, in funding the Loan. In its original Complaint (ECF No. 1), BBN clearly alleged that "BBN represented a consortium of community banks that would each provide a portion of the money loaned to SBM and is authorized to bring this action."¹ (Compl. ¶ 2.) In the Complaint & Plaintiff's May 27, 2011 Initial Disclosures (ECF No. 170-1), Plaintiff also clearly indicated

¹ It appears that each Defendant initially answered this allegation by asserting that they lacked knowledge or information that would allow them to admit or deny this particular allegation. (See Answers (ECF Nos. 40, 41, 42, 50, 60, 116, 152) ¶ 2.)

that its damages included “\$9 million in principal.” (Id. at 4.) There is no genuine dispute that this amount reflects the amount lost by the Consortium, not BBN alone.

Having conducted some discovery, it appears Defendants now wish to dispute whether BBN is appropriately “authorized” to seek as damages the losses of the other members of the Consortium. In the context of this case, such a dispute is readily resolved by allowing the members of the Consortium to join as plaintiffs thereby ensuring that the real parties in interest are named. Allowing the joinder of the nine other banks involved in the Loan is clearly contemplated under the letter and spirit of Rule 17. See Fed. R. Civ. P. 17(a)(3) (“The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.”) Moreover, joinder of the other banks best serves the interests of justice and judicial efficiency.

Alternatively, the Court readily concludes that the amendment sought in this case is also allowable under the “liberal” standard of Rule 15 and the “good cause” standard of Rule 16. Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 327 (1st Cir. 2008) (“Our case law clearly establishes that Rule 16(b)’s ‘good cause’ standard, rather than Rule 15(a)’s ‘freely give[n]’ standard, governs motions to amend filed after scheduling order deadlines.”). First, the amendment is not futile. Second, the Court finds that Plaintiff has exhibited the requisite diligence in seeking amendment of the Complaint. Third, on the record presented, the Court fails to see how Defendants can claim they are prejudiced by the proposed amendment. The proposed amendment does not add claims or increase the damages sought. Rather, Defendants had adequate notice as to the inclusion of the losses of the proposed additional plaintiffs from the

outset of this litigation. While Defendants argue that they would be prejudiced because they would seek additional discovery from these nine other banks and discovery “has nearly concluded,” any discovery-related prejudice is readily resolved by Defendants moving for an extension of the discovery deadline and/or seeking additional amendments to the scheduling order. In short, there is ample good cause to support allowing the proposed amendment of the Complaint.

Therefore, Plaintiff’s Motion to Amend is hereby GRANTED. To the extent that Plaintiff still wishes to file the motion for summary judgment outlined in its February 5, 2013 Notice (ECF No. 158) & February 13, 2013 Memorandum (ECF No. 161), after reviewing this ruling, Plaintiff shall notify the Court within seven days of today. In the absence of receiving notification of the intention to file summary judgment, the Court will lift the stay of discovery and set new scheduling order deadlines on April 26, 2013.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 19th day of April, 2013.

Plaintiff

BANKERS' BANK NORTHEAST

represented by **AMANDA F. LAWRENCE**
SCOTT & SCOTT
108 NORWICH AVENUE
P.O. BOX 192
COLCHESTER, CT 6415
860-537-5537
Email: alawrence@scott-scott.com
TERMINATED: 05/04/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

CHRISTOPHER R. CAUSEY
MITTEL ASEN LLC
85 EXCHANGE STREET
4TH FLOOR
PORTLAND, ME 04101
207-775-3101
Email: ccausey@mittelasen.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JUDITH S. SCOLNICK
SCOTT & SCOTT LLP
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE, 40TH
FLOOR
NEW YORK, NY 10174
212-223-6444
Fax: 212-223-6334
Email: jscolnick@scott-scott.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

THOMAS L. LAUGHLIN , IV
SCOTT & SCOTT LLP
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE, 40TH
FLOOR
NEW YORK, NY 10174
212-223-6444
Fax: 212-223-6334
Email: tlaughlin@scott-scott.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

RICHARD ALDEN
TERMINATED: 03/20/2012

Defendant

EVERETT L. AYER

represented by **ELIZABETH J. STEWART**
MURTHA CULLINA LLP
TWO WHITNEY AVENUE

NEW HAVEN, CT 06510
203-772-7710
Fax: 203-772-7723
Email: estewart@murthalaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

HUGH F. MURRAY , III
MURTHA CULLIN LLP
CITY PLACE I
185 ASYLUM STREET
HARTFORD, CT 06103
860-240-6077
Email: hmurray@murthalaw.com
TERMINATED: 05/02/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
MURTHA CULLINA LLP
117 BROAD STREET
4TH FLOOR
STAMFORD, CT 06901
203-653-5456
Fax: 203-653-5444
Email: jgoldstein@murthalaw.com
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
PRETI, FLAHERTY, BELIVEAU, &
PACHIOS, LLP
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, ME 04112-9546
791-3000
Fax: 791-3111
Email: ghansel@preti.com
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
MURTHA CULLINA LLP
CITY PLACE I
185 ASYLUM STREET
HARTFORD, CT 06103

860-240-6139
Email: mgoldfarb@murthalaw.com
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
PRETI, FLAHERTY, BELIVEAU, &
PACHIOS, LLP
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, ME 04112-9546
791-3000
Fax: 791-3111
Email: sschutz@preti.com
ATTORNEY TO BE NOTICED

Defendant

RICHARD L. GOODWIN

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

AL C. GRACEFFA

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN

(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

GEORGE W. HESELTON

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

HUGH F. MURRAY , III
(See above for address)
TERMINATED: 05/02/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

DANIEL F. HOLLINGDALE

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

ROBERT P. LACASSE

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)

ATTORNEY TO BE NOTICED

Defendant

ARTHUR C. MARKOS

represented by **JAMES E. REGAN**
MCCARTER & ENGLISH, LLP
CITY PLACE I
185 ASYLUM STREET
HARTFORD, CT 06103-3495
860-275-6771
Email: jregan@mccarter.com
TERMINATED: 05/04/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JANE ELAINE BALLERINI
NEUBERT, PEPE & MONTEITH
195 CHURCH STREET
13TH FLOOR
NEW HAVEN, CT 06510-2026
203-821-2000
Email: jeb@npmlaw.com
TERMINATED: 11/08/2011
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

KELLY W. MCDONALD
MURRAY PLUMB & MURRAY
75 PEARL STREET
P.O. BOX 9785
PORTLAND, ME 04104-5085
207-773-5651
Email: kmcdonald@mpmlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PAULA CRUZ CEDILLO
MCCARTER & ENGLISH, LLP
CITY PLACE I
185 ASYLUM STREET
HARTFORD, CT 06103-3495
860-275-6700
Fax: 860-724-3397
Email: pcedillo@mccarter.com
TERMINATED: 05/04/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SIMON I. ALLENTUCH
NEUBERT, PEPE & MONTEITH
195 CHURCH STREET
13TH FLOOR
NEW HAVEN, CT 06510-2026
203-821-2000
Email: sia@npmlaw.com
TERMINATED: 11/08/2011
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

THOMAS J. FINN
MCCARTER & ENGLISH, LLP
CITY PLACE I
185 ASYLUM STREET
HARTFORD, CT 06103-3495
860-275-6700
Fax: 860-724-3397
Email: tfinn@mccarter.com
TERMINATED: 05/04/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RICHARD L. O'MEARA
MURRAY PLUMB & MURRAY
75 PEARL STREET
P.O. BOX 9785
PORTLAND, ME 04104-5085
773-5651
Fax: 207-773-8023
Email: romeara@mpmlaw.com
ATTORNEY TO BE NOTICED

Defendant

PAUL F. MCCLAY

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

HUGH F. MURRAY , III
(See above for address)
TERMINATED: 05/02/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

JOHN G. RIZZO

represented by **ELIZABETH J. STEWART**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JENNIFER COHEN GOLDSTEIN
(See above for address)
TERMINATED: 02/25/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL DAVID GOLDFARB
(See above for address)
ATTORNEY TO BE NOTICED

SIGMUND D. SCHUTZ
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**BERRY DUNN MCNEIL &
PARKER LLC**

represented by **KENNETH ROSENTHAL
BRENNER, SALTZMAN &
WALLMAN LLP**

271 WHITNEY AVENUE
NEW HAVEN, CT 06511
203-772-2600
Fax: 203-772-4008
Email: krosenthal@bswlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROWENA AMANDA MOFFETT
BRENNER, SALTZMAN &
WALLMAN LLP
271 WHITNEY AVENUE
NEW HAVEN, CT 06511
203-772-2600
Fax: 203-772-4008
Email: rmoffett@bswlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MICHAEL A. NELSON
JENSEN BAIRD GARDNER &
HENRY
TEN FREE STREET
PO BOX 4510
PORTLAND, ME 04112
775-7271
Email: mnelson@jbgh.com