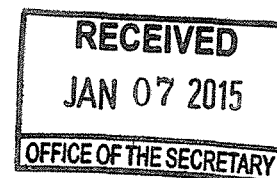


## KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP

BARRY H. BERKE  
 PARTNER  
 PHONE 212-715-7560  
 FAX 212-715-7660  
 BBERKE@KRAMERLEVIN.COM

January 7, 2015



VIA FACSIMILE AND FEDERAL EXPRESS

Mr. Brent J. Fields  
 Secretary  
 United States Securities and Exchange Commission  
 100 F Street, NE  
 Washington, DC 20549

Re: *In the Matter of Michael S. Steinberg, File No. 3-15925*

Dear Mr. Fields:

As you are aware, Respondent Michael S. Steinberg asked the Commission on December 19, 2014, to stay the briefing schedule in the above-referenced proceeding.<sup>1</sup> On December 22, 2014, the Commission, citing the circumstances described in Mr. Steinberg's letter, determined that a 21-day extension of time was appropriate. Mr. Steinberg's opening brief is now due to be filed next Friday, January 16, 2015. We write now to briefly inform the Commission of certain developments that occurred subsequent to the issuance of the Commission's extension order and to request, again with the Division of Enforcement's consent, that, pursuant to Rule 161(c)(1) of its Rules of Practice, the Commission extend the briefing schedule until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or certiorari in *United States v. Newman*, Nos. 13-1837-cr(L) (2d Cir.), and *United States v. Newman (Chiasson)*, No. 13-1917-cr(con) (2d Cir.) (collectively, "*Newman/Chiasson*"); and (2) any such petitions are finally decided.

In light of the Second Circuit's recent decision in *Newman/Chiasson*, two courts have stayed separate proceedings against Mr. Steinberg. On December 22, 2014, the Honorable Shira A. Scheindlin ordered that the Commission's civil enforcement against Mr. Steinberg in the Southern District of New York remain stayed "until the end" of Mr. Steinberg's criminal

<sup>1</sup> A copy of Mr. Steinberg's December 19, 2014 letter request for an extension is attached to this letter as Exhibit A.

**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

Mr. Brent J. Fields  
January 7, 2015  
Page 2

appeal.<sup>2</sup> The following week, on December 31, 2014, the Second Circuit granted Mr. Steinberg's unopposed motion to hold his appeal in abeyance pending final resolution of any petition for rehearing or certiorari that the government may file in *Newman/Chiasson*.<sup>3</sup> With both the civil and criminal actions stayed in recognition that Mr. Steinberg will be entitled to have his conviction reversed unless the *Newman/Chiasson* decision is vacated or modified, only the Commission's administrative proceeding is moving forward at this time.

As we explained in our December 19 letter, reversal of Mr. Steinberg's conviction will vitiate the sole basis for Section 203(f) sanctions alleged in the Order Instituting Administrative Proceedings. Given the impact of the *Newman/Chiasson* decision on Mr. Steinberg's conviction, we believe that proceeding at this time would "substantially prejudice the[] case" within the meaning of Rule 161. We also respectfully submit that it would be inefficient for the Commission to require full briefing on Mr. Steinberg's petition for review while the government considers and potentially pursues further appellate review. Accordingly, with the Division's consent, Mr. Steinberg respectfully requests that the Commission stay the current briefing schedule until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or certiorari in *Newman/Chiasson*; and (2) any such petitions are finally decided. The parties will provide the Commission with written updates upon the disposition of these matters.<sup>4</sup>

The parties are available telephonically should your Office or the Commission have any questions or require additional information.

Thank you for your consideration.

Respectfully submitted,



Barry H. Berke

cc: Daniel R. Marcus, Esq. (by facsimile and e-mail)  
Justin P. Smith, Esq. (by facsimile and e-mail)

<sup>2</sup> A copy of Judge Scheindlin's order is attached to this letter as Exhibit B.

<sup>3</sup> A copy of Mr. Steinberg's unopposed motion to hold his appeal in abeyance (without exhibits) is attached to this letter as Exhibit C. The Second Circuit's order granting the motion is attached as Exhibit D.

<sup>4</sup> In the event the Commission chooses to grant another 21-day extension, we will respectfully seek additional 21-day extensions as necessary until such time as the status of the *Newman/Chiasson* decision is resolved.

**EXHIBIT A**

## KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP

BARRY H. BERKE  
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FAX 212-715-7660  
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December 19, 2014

VIA FACSIMILE AND FEDERAL EXPRESS

Mr. Brent J. Fields  
Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *In the Matter of Michael S. Steinberg*, File No: 3-15925

Dear Mr. Fields:

We represent Respondent Michael S. Steinberg in the above-referenced administrative proceeding. On November 26, 2014, the Commission granted Mr. Steinberg's petition for review of an administrative law judge's initial decision barring him from the securities industry. Mr. Steinberg's brief in support of the petition for review is due to be filed by next Friday, December 26, 2014. The Division of Enforcement's brief in opposition is due in late-January, and Mr. Steinberg's reply is due two weeks thereafter. For the reasons set forth below, we write to request that the Commission stay that briefing schedule in light of the recent decision by the Second Circuit Court of Appeals in the related cases *United States v. Newman*, Nos. 13-1837-cr(L) (2d Cir.) and *United States v. Newman (Chiasson)*, No. 13-1917-cr(con) (2d Cir.) (collectively, "*Newman/Chiasson*"). The Division, by Senior Counsel Daniel R. Marcus, consents to this request.

Pursuant to the Investment Advisers Act of 1940, the Commission commenced the instant administrative proceeding shortly after Mr. Steinberg was convicted of insider trading. Significantly, the criminal case against Mr. Steinberg overlapped substantially with an earlier-prosecuted case against Todd Newman and Anthony Chiasson. Both cases were tried before United States District Judge Richard J. Sullivan, and both involved the same "tipping chain" of analysts who obtained information from other individuals who, in turn, obtained that information from corporate insiders at Dell, Inc. and Nvidia Corp. Most significant to this unopposed application, both cases squarely presented the legal issue of whether, to sustain a conviction in an insider trading case, the government must prove that a remote tippee defendant

**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

Mr. Brent J. Fields  
December 19, 2014  
Page 2

knew that a company insider disclosed confidential information in exchange for a personal benefit. At both trials, Judge Sullivan answered that question in the negative and refused to give the defendants' proposed jury instructions concerning tippee knowledge. That refusal was at the heart of the *Newman/Chiasson* appeal, which was argued earlier this year.<sup>1</sup>

Last week, in a unanimous opinion issued on December 10, 2014, the Second Circuit sided with the defendants on the common legal issue of a tippee's required knowledge. Specifically, the Court held that "in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he did so in exchange for a personal benefit."<sup>2</sup> Finding that the District Court's jury instruction to the contrary was erroneous, the Court ruled that the judgments of conviction of Messrs. Newman and Chiasson must be reversed. The Court further ordered that the indictments against Messrs. Newman and Chiasson be dismissed with prejudice because (1) the evidence was insufficient to show "that the corporate insiders received any personal benefit in exchange for their tips," and without that underlying tipper liability there could be no derivative tippee liability and (2) there was no evidence that the defendants knew that they were trading on information obtained from insiders who had provided that information in exchange for a benefit.

Because Judge Sullivan gave the same instructions regarding tippee knowledge to the *Steinberg* and *Newman/Chiasson* juries, and because the relevant facts concerning tipper benefit were necessarily identical in both cases, Mr. Steinberg will be entitled to the same relief as Messrs. Newman and Chiasson unless the panel's decision is vacated or modified in the event the government seeks and is granted upon further review.<sup>3</sup> Given that reversal of Mr. Steinberg's conviction will vitiate the sole basis for Section 203(f) sanctions alleged in the Order Instituting Administrative Proceedings, the parties believe that this proceeding should be stayed at this time.<sup>4</sup>

---

<sup>1</sup> The Second Circuit held Mr. Steinberg's separate appeal in abeyance pending a decision in *Newman/Chiasson*.

<sup>2</sup> A copy of the Second Circuit's opinion is attached to this letter as Exhibit A.

<sup>3</sup> On December 12, 2014, the U.S. Attorney's Office moved to extend to January 23, 2015 its time to petition for rehearing and/or rehearing *en banc* so that it could consult with the Solicitor General's office. That motion remains *sub judice*.

<sup>4</sup> Mr. Steinberg and the Division intend to ask the Honorable Shira Scheindlin to continue to stay the parallel civil injunctive case pending in the Southern District of New York. Additionally, Mr. Steinberg, without opposition from the U.S. Attorney's Office, moved the Second Circuit earlier today to again hold his appeal in abeyance. A copy of Mr. Steinberg's motion is attached to this letter as Exhibit B.

**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

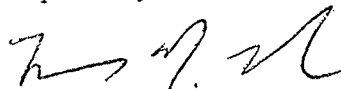
Mr. Brent J. Fields  
December 19, 2014  
Page 3

For these reasons, and with the Division's explicit consent, Mr. Steinberg respectfully requests that the Commission stay the current briefing schedule until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or *certiorari* in *Newman/Chiasson* and (2) any such petitions are finally decided. The parties will provide the Commission with written updates upon the disposition of these matters.

The parties are available telephonically should your Office or the Commission have any questions or require additional information.

Thank you for your consideration.

Respectfully submitted,



Barry H. Berke

cc: Daniel R. Marcus, Esq. (by facsimile and e-mail)  
Justin P. Smith, Esq. (by facsimile and e-mail)

**EXHIBIT B**

Case 1:13-cv-02082-SAS Document 35 Filed 12/22/14 Page 1 of 2

Case 1:13-cv-02082-SAS Document 34 Filed 12/22/14 Page 1 of 2

KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/22/14
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December 22, 2014

BARRY H. BERKE  
 PARTNER  
 PHONE 212-715-7560  
 FAX 212-715-7660  
 BBERKE@KRAMERLEVIN.COM

Request granted. The case  
 will remain stayed until the  
 end of the appellate  
 proceeding. SD ORDERED

VIA ECF

The Honorable Shira A. Scheindlin  
 United States District Court  
 Southern District of New York  
 500 Pearl Street, Room 1620  
 New York, New York 10007

12/22/14 Shira A. Scheindlin, USDJ

Re: SEC v. Michael S. Steinberg, No. 13 Civ. 2082 (SAS)

Dear Judge Scheindlin:

We represent defendant Michael S. Steinberg in the above-referenced action. We write to update the Court as to recent developments that relate to the status of this case.

At a conference held on September 11, 2014, this Court continued the stay of proceedings that Judge Harold Baer, Jr. imposed pending the disposition of *United States v. Newman*, Nos. 13-1837-cr(L) (2d Cir.) and *United States v. Newman (Chiasson)*, No. 13-1917-cr(con) (2d Cir.) (collectively, "*Newman/Chiasson*"). (Docket No. 30). As the Court is likely aware, the Second Circuit issued an opinion in *Newman/Chiasson* last week and ordered that the defendant-appellants' convictions be reversed and the indictments against them be dismissed with prejudice.<sup>1</sup> Specifically, the Court held that "in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he did so in exchange for a personal benefit" and found that the District Court's jury instruction to the contrary was erroneous. The Court further held that (1) the evidence was insufficient to show "that the corporate insiders received any personal benefit in exchange for their tips," and without that underlying tipper liability there could be no derivative tippee liability and (2) there was no evidence that the defendants knew that they were trading on information obtained from insiders who had provided that information in exchange for a benefit.

<sup>1</sup> A copy of the Second Circuit's opinion is attached to this letter as Exhibit A.

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000

990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

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Case 1:13-cv-02082-SAS Document 34 Filed 12/22/14 Page 2 of 2

KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP

The Honorable Shira A. Scheindlin

December 22, 2014

Page 2

Because of the substantial legal and factual overlap between the *Newman/Chiasson* and *Steinberg* cases, Mr. Steinberg will be entitled to the same relief as Messrs. Newman and Chiasson (*i.e.*, reversal of his conviction and dismissal of the indictment with prejudice), unless the panel's decision is vacated or modified in the event the government seeks and is granted further review. For that reason, Mr. Steinberg, without opposition from the government, moved the Second Circuit last week to hold his appeal in abeyance until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or *certiorari* in *Newman/Chiasson* and (2) any such petitions are finally decided.<sup>2</sup>

Given the status of the *Newman/Chiasson* appeal and its impact on Mr. Steinberg's conviction, we respectfully request that this case remain stayed until the final resolution of the *Newman/Chiasson* and *Steinberg* appeals. Plaintiff United States Securities and Exchange Commission, by Senior Counsel Daniel R. Marcus, consents to this request.

The parties are available for a conference should the Court have any questions or require additional information.

Thank you for your consideration.

Respectfully submitted,

/s/ Barry H. Berke

Barry H. Berke

cc: Daniel R. Marcus, Esq. (by ECF)  
Justin P. Smith, Esq. (by ECF)

---

<sup>2</sup> A copy of Mr. Steinberg's motion without exhibits is attached to this letter as Exhibit B.

**EXHIBIT C**

Case 14-2141, Document 28, 12/19/2014, 1399454, Page1 of 61
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-2141 Caption [use short title]

Motion for: order holding appeal in abeyance United States of America v. Newman (Steinberg)

Set forth below precise, complete statement of relief sought:

Mr. Steinberg respectfully requests that his appeal, including the briefing schedule, be held in abeyance until the government decides whether to petition for further appellate review in the lead case, United States v. Newman, No. 13-1837, and the related case, United States v. Newman (Chiasson), No. 13-1917, and pending final resolution of such petition(s).

MOVING PARTY: Michael Steinberg OPPOSING PARTY: United States of America
Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Barry H. Berke OPPOSING ATTORNEY: Harry A. Chernoff
[name of attorney, with firm, address, phone number and e-mail]

Kramer Levin Naftalis & Frankel LLP U.S. Attorney's Office/S.D.N.Y.
1177 Avenue of the Americas, New York, NY 10036 One St. Andrew's Plaza, New York, NY 10007
(212) 715-7560, bberke@kramerlevin.com (212) 637-2481 harry.chernoff@usdoj.gov

Court-Judge/Agency appealed from: U.S. District Court, S.D.N.Y. - Hon. Richard J. Sullivan

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain):

Opposing counsel's position on motion:
Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency:

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney: /s/ Barry H. Berke Date: December 19, 2014 Service by: CM/ECF Other [Attach proof of service]

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----	X
UNITED STATES OF AMERICA,	:
	:
<i>Appellee,</i>	:
	:
v.	:
	: No. 14-2141
TODD NEWMAN, ANTHONY CHIASSON,	:
JON HORVATH, DANNY KUO,	: DECLARATION IN SUPPORT
HYUNG G. LIM,	: OF UNOPPOSED MOTION TO
	: <u>HOLD APPEAL IN ABEYANCE</u>
<i>Defendants,</i>	:
	:
MICHAEL STEINBERG,	:
	:
<i>Defendant-Appellant.</i>	:
-----	X

BARRY H. BERKE, pursuant to 28 U.S.C. § 1746, hereby declares as

follows:

1. I am an attorney duly admitted to practice law in the State of New York and before this Court. I am a member of the law firm Kramer Levin Naftalis & Frankel LLP, counsel for Defendant-Appellant Michael Steinberg in this appeal. I make this declaration in support of Mr. Steinberg's unopposed motion for an order holding his appeal in abeyance pending (1) a decision by the government whether to petition for rehearing, rehearing *en banc* and/or *certiorari* in *United States v. Newman*, No. 13-1837, and *United States v. Newman*

Case 14-2141, Document 28, 12/19/2014, 1399454, Page3 of 61

(*Chiasson*), No. 13-1917 (collectively, “*Newman/Chiasson*”) and (2) final resolution of any such petition(s).

2. The government does not oppose this application.

3. On August 6, 2014, this Court granted Mr. Steinberg’s unopposed motion to hold his appeal in abeyance pending a merits decision in the *Newman/Chiasson* case, based on substantial overlapping factual and legal issues.<sup>1</sup> The panel in *Newman/Chiasson* issued its decision on December 10, 2014. *United States v. Newman*, \_\_\_ F.3d \_\_\_, 2014 WL 6911278 (2d Cir. Dec. 10, 2014).<sup>2</sup> That same day, this Court issued an order lifting the stay of Mr. Steinberg’s appeal.<sup>3</sup>

4. Last week, the government moved to extend to January 23, 2015 its time to seek rehearing and/or rehearing *en banc* in *Newman/Chiasson*.<sup>4</sup> The government’s motion remains *sub judice*. If the filing deadline is not extended, the government’s petition would be due on December 24, 2014.

5. Mr. Steinberg’s first abeyance motion explained the substantial overlap in the factual and legal issues presented by the *Steinberg* and

---

<sup>1</sup> This Court’s order granting Mr. Steinberg’s motion is attached hereto as Exhibit A.

<sup>2</sup> This Court’s unanimous December 10, 2014 opinion in the *Newman/Chiasson* is attached hereto as Exhibit B.

<sup>3</sup> This Court’s December 10, 2014 order is attached hereto as Exhibit C.

<sup>4</sup> The government’s motion to extend time is attached hereto as Exhibit D.

*Newman/Chiasson* cases.<sup>5</sup> Factually, the *Newman/Chiasson* and *Steinberg* cases overlapped, because they included the same “tipping chain” of analysts who obtained the information from other individuals who, in turn, obtained that information from Dell and Nvidia insiders. The first abeyance motion further explained that the cases overlapped legally because the *Steinberg* case presents one of the exact same grounds for reversal that was squarely presented in the *Newman/Chiasson* appeal: whether in an insider trading case the government must prove that a remote tippee defendant knew that the company insider disclosed confidential information in exchange for a personal benefit. Ex. E, ¶ 2.

6. In its December 10, 2014, unanimous opinion in *Newman/Chiasson*, this Court sided with the defendants on the common legal issue of a tippee’s required knowledge, holding that “in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he did so in exchange for a personal benefit.” *Newman*, 2014 WL 6911278, at \*1 & \*6-8. Finding that the District Court’s jury instruction to the contrary was erroneous and that the proof was insufficient, this Court ruled that the judgments of conviction of Newman and Chiasson must be reversed. *Id.*

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<sup>5</sup> Mr. Steinberg’s initial motion to hold his appeal in abeyance is attached hereto as Exhibit E.

Case 14-2141, Document 28, 12/19/2014, 1399454, Page5 of 61

7. Because the same District Judge gave the same erroneous instruction on this issue at both the *Newman/Chiasson* and *Steinberg* trials, *see* Ex. E, ¶¶ 5 & 11, Mr. Steinberg will be entitled to the same relief on the jury charge error.

8. The *Newman/Chiasson* decision further ordered that the indictments against Messrs. Newman and Chiasson be dismissed with prejudice because (1) the evidence was insufficient to show “that the corporate insiders received any personal benefit in exchange for their tips,” and without that underlying tipper liability there could be no derivative tippee liability, *Newman*, 2014 WL 6911278, at \*10-11, and (2) there was no evidence that the defendants knew that they were trading on information obtained from insiders who had provided that information in exchange for a benefit, *id.* at \*11-13.

9. The panel’s decision in *Newman/Chiasson* also compels the same relief for Mr. Steinberg.

10. With respect to whether the insiders received the required benefit in exchange for their tipping, the relevant facts are necessarily identical in the *Newman/Chiasson* and *Steinberg* trials and appeals. In both cases, the alleged underlying breaches of fiduciary duty were based on exactly the same facts: that an insider at Dell (Rob Ray) breached his duty by sharing confidential information in exchange for career advice from a purported friend, Sandy Goyal, and that an

insider at Nvidia (Chris Choi) breached his duty by sharing nonpublic information in exchange for friendship with Hyung Lim. The *Newman/Chiasson* panel rejected the sufficiency of this evidence of purported benefits. *Id.* at \*10-11.

11. Because Mr. Steinberg's trial and appeal involve the same insiders and the same purported benefits, the *Newman/Chiasson* decision requires that Mr. Steinberg's convictions be reversed and his indictment dismissed with prejudice as well.

12. The government may elect to seek further review in *Newman/Chiasson*. That provides related grounds for holding Mr. Steinberg's appeal in abeyance again. First, if the result of the government's decision is that the panel's opinion remains in place (whether because the government decides not to petition for review of *Newman/Chiasson*, its petition is denied, or further review results in reinstating or affirming the panel's decision), Mr. Steinberg will receive the same relief for the same reasons, with no need for briefing on other issues, thus saving this Court the need to address Mr. Steinberg's other grounds for reversal. Second, in the event further review in *Newman/Chiasson* modifies the Court's opinion or leads to a different outcome, staying Mr. Steinberg's appeal until such review is completed would allow both parties to address the common issues with the benefit of knowing the law that applies. An abeyance would also preserve judicial resources by allowing the Court to decide Mr. Steinberg's appeal by



applying the new opinion in *Newman/Chiasson* to the identical and overlapping issues that Mr. Steinberg's appeal raises.<sup>6</sup>

13. In the interest of judicial economy, this Court has held appeals in abeyance where, as here, a factually or legally related and potentially case-dispositive appeal is closer to final resolution. *See, e.g.,* Order, *Pedersen v. Office of Prof'l Mgmt.*, Nos. 12-3273 & 12-3872 (2d Cir. Nov. 28, 2012) (granting motion to hold appeal in abeyance pending disposition of petitions for certiorari in four related cases).<sup>7</sup> Similarly, other circuit courts have held appeals in abeyance pending post-decision review of an appeal that raises identical legal issues. *See, e.g.,* Order, *Menominee Indian Tribe of Wisc. v. United States*, No. 12-5217 (D.C. Cir. Feb. 15, 2013) (holding appeal in abeyance pending disposition of petition for rehearing *en banc* in Federal Circuit case that presented same legal question).<sup>8</sup>

WHEREFORE, Mr. Steinberg respectfully requests that his appeal, including the briefing schedule, be held in abeyance pending (1) the deadlines for a decision by the government whether to petition for rehearing, rehearing *en banc* and/or *certiorari* in *Newman/Chiasson* and, in the event the government elects to file such petition(s), (2) the final non-appealable disposition of any such

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<sup>6</sup> In the event full merits briefing is required, Mr. Steinberg intends to present additional arguments for reversal that are not directly relevant to this application.

<sup>7</sup> The *Pedersen* order is attached hereto as Exhibit F.

<sup>8</sup> The *Menominee Indian Tribe* order is attached hereto as Exhibit G.

Case 14-2141, Document 28, 12/19/2014, 1399454, Page8 of 61

petition(s). As noted at the outset, the government, by Assistant U.S. Attorney Harry A. Chernoff, does not oppose this request.

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

Executed on December 19, 2014  
New York, New York

/s/ Barry H. Berke  
BARRY H. BERKE  
*Attorney for Defendant-Appellant*  
*Michael Steinberg*

**EXHIBIT D**

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of December, two thousand and fourteen.

Before: Ralph K. Winter,  
*Circuit Judge.*

United States of America,

Appellee,

v.

Michael Steinberg,

Defendant-Appellant.

**ORDER**

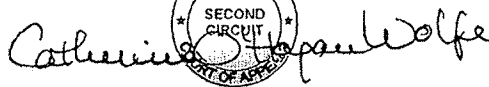

Docket No. 14-2141

Appellant moves to hold this appeal in abeyance until the Government decides whether to petition for further appellate review in docket nos. 13-1837 and 13-1917, and pending final resolution of such petition.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

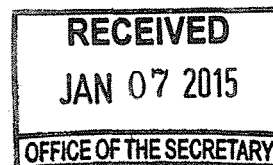
  


**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

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FAX DEPARTMENT:  
(212) 715-9100  
SENDER'S FAX NUMBER:  
(212) 715-8094

FROM: Theodore S. Hertzberg  
DATE: January 7, 2015  
PHONE: (212) 715-9194



PLEASE DELIVER AS SOON AS POSSIBLE TO:

RECIPIENT	COMPANY	FAX No.
Brent J. Fields, Secretary	U.S. Securities & Exchange Commission	(202) 772-9325

TOTAL NUMBER OF PAGES INCLUDING THIS PAGE: 21

The documents accompanying this facsimile transmission are intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination of the communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

RE: IN THE MATTER OF MICHAEL S. STEINBERG, FILE NO. 3-15925

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