

Oct 09, 2008

FILED
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UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AUCTION RATE SECURITIES (ARS)
MARKETING LITIGATION

MDL No. 1979

ORDER DENYING TRANSFER

Before the entire Panel:* Plaintiffs in thirteen actions have moved, pursuant to 28 U.S.C. § 1407, to centralize this litigation in the Southern District of New York or, alternatively, in the Northern District of California. Plaintiffs' motion is supported by plaintiffs in eight constituent actions and a potential tag-along action; in the alternative, certain plaintiffs suggest centralization in the Northern District of Georgia. Responding defendants,¹ plaintiffs in three constituent actions and a potential tag-along action, and lead plaintiffs in the Southern District of New York consolidated actions against Citigroup oppose centralization.

This litigation currently consists of 29 actions pending as follows: 25 actions in the Southern District of New York, three actions in the Northern District of California, and an action in the Northern District of Georgia, as listed on Schedule A.²

* Judges Heyburn and Vratil did not participate in the decision of this matter.

¹ Bank of America Investment Services, Inc.; Bank of America Securities, LLC; Bank of America Corp. (collectively Bank of America). Citigroup Global Markets, Inc.; Citigroup, Inc.; and Brian Williams (collectively Citigroup). Deutsche Bank AG; Deutsche Bank Securities, Inc.; E*Trade Financial Corp.; E*Trade Securities LLC; Goldman Sachs Group, Inc.; Goldman, Sachs & Co.; JP Morgan Chase & Co.; JP Morgan Securities, Inc.; Merrill Lynch & Co., Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley; Morgan Stanley & Co., Inc.; Oppenheimer & Co., Inc.; Oppenheimer Asset Management; Oppenheimer Asset Management, Inc.; Oppenheimer Holdings, Inc.; Freedom Investments, Inc.; Raymond James & Associates, Inc.; Raymond James Financial Services, Inc.; Raymond James Financial, Inc.; Royal Bank of Canada; RBC Capital Markets Corp.; RBC Dain Rauscher, Inc.; Suntrust Banks, Inc.; Suntrust Robinson Humphrey, Inc.; TD Ameritrade Holding Corp.; TD Ameritrade, Inc. (f/k/a TD Waterhouse Investor Services, Inc.); UBS AG; UBS Financial Services, Inc.; UBS Securities, LLC; Wachovia Corp.; Wachovia Securities, LLC; Wells Fargo & Co.; Wells Fargo Investments, LLC; Wells Fargo Bank, Ltd.; Wells Fargo Private Investment Advisors, LLC; Dan Hilken; Shalom Morgan; and Andrey Movsesyan.

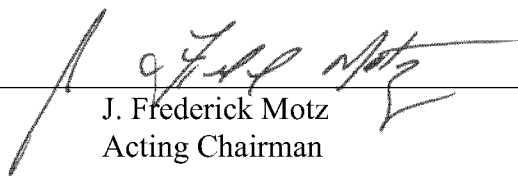
² Plaintiffs' motion originally included two additional actions, which were dismissed in early July 2008.

On the basis of the papers filed and hearing session held, we are not persuaded that Section 1407 centralization would serve the convenience of the parties and witnesses or further the just and efficient conduct of this litigation. The actions before us are securities fraud actions filed in the wake of widespread failure in the market for auction rate securities (ARS). While the actions share some general common factual questions, no single action is against more than one defendant entity (or its affiliates and/or employees). Further, the actions involve different representations made to each purchaser of ARS, which will necessarily vary from institution to institution (and perhaps from ARS to ARS). The proponents of centralization have failed to convince us that any common questions of fact among these actions are sufficiently complex and/or numerous to justify Section 1407 transfer at this time. Alternatives to transfer exist that may minimize whatever possibilities there might be of duplicative discovery and/or inconsistent pretrial rulings. *See, e.g., In re Eli Lilly and Co. (Cephalexin Monohydrate) Patent Litigation*, 446 F.Supp. 242, 244 (J.P.M.L. 1978); *see also Manual for Complex Litigation, Fourth*, § 20.14 (2004).

Although Bank of America opposes centralization of all actions before the Panel, Bank of America requests centralization of the action and potential tag-along actions against it. Only one action is currently before the Panel against Bank of America; as such, the litigation lacks the multidistrict character required by Section 1407 for centralization, and we must deny Bank of America's request.

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407, for centralization of these 29 actions is denied.

PANEL ON MULTIDISTRICT LITIGATION



J. Frederick Motz
Acting Chairman

John G. Heyburn II, Chairman*
Kathryn H. Vratil*
W. Royal Furgeson, Jr.

Robert L. Miller, Jr.
David R. Hansen

**IN RE: AUCTION RATE SECURITIES (ARS)
MARKETING LITIGATION**

MDL No. 1979

SCHEDULE A

Northern District of California

Lindell Van Dyke, etc. v. Wells Fargo & Co., et al., C.A. No. 3:08-1962
Richard S. Bondar, etc. v. Bank of America Corp., et al., C.A. No. 3:08-2599
Nathalie Al-Thani v. Wells Fargo & Co., et al., C.A. No. 4:08-1745

Northern District of Georgia

Martin Zisholtz v. SunTrust Banks, Inc., et al., C.A. No. 1:08-1287

Southern District of New York

Ronald D. Kassover v. UBS AG, et al., C.A. No. 1:08-2753
Richard Kraemer v. Deutsche Bank AG, et al., C.A. No. 1:08-2788
George Humphrys v. TD Ameritrade Holding Corp., et al., C.A. No. 1:08-2912
Judy Waldman, etc. v. Wachovia Corp., et al., C.A. No. 1:08-2913
In re UBS Auction Rate Securities Litigation, C.A. No. 1:08-2967
John Finn v. Citi Smith Barney, et al., C.A. No. 1:08-2975
Gary Miller v. Morgan Stanley & Co., Inc., C.A. No. 1:08-3012
Frederick Burton v. Merrill Lynch & Co., Inc., et al., C.A. No. 1:08-3037
Richard Stanton, etc. v. Merrill Lynch & Co., Inc., et al., C.A. No. 1:08-3054
Ricardo L. Sanchez v. UBS AG, et al., C.A. No. 1:08-3082
LHB Insurance Brokerage, Inc. v. Citigroup, Inc., et al., C.A. No. 1:08-3095
Lisa Swanson v. Citigroup, Inc., et al., C.A. No. 1:08-3139
Sharon Shawn Jamail v. Morgan Stanley, et al., C.A. No. 1:08-3178
John W. Oughtred v. E*Trade Financial Corp., et al., C.A. No. 1:08-3295
Defer LP v. Raymond James Financial, Inc., et al., C.A. No. 1:08-3449
Bette M. Grossman v. Oppenheimer & Co., Inc., et al., C.A. No. 1:08-3528
David M. Milch, etc. v. The Goldman Sachs Group, Inc., et al., C.A. No. 1:08-3659
Samuel A. Stockhamer, et al. v. Citigroup, Inc., C.A. No. 1:08-3904
Randolph Bonnist v. UBS AG, et al., C.A. No. 1:08-4352
Wedgewood Tacoma LLC v. Citigroup, Inc., et al., C.A. No. 1:08-4360
Eugene F. Brigham, etc. v. Royal Bank of Canada, et al., C.A. No. 1:08-4431

MDL No. 1979 Schedule A (Continued)

Southern District of New York (Continued)

David T. Vining v. Oppenheimer Holdings, Inc., et al., C.A. No. 1:08-4435

Milton Ciplet v. JP Morgan Chase & Co., et al., C.A. No. 1:08-4580

Saed Ghalayini v. Citigroup, Inc., et al., C.A. No. 1:08-5016

Sheldon Silverstein v. TD Ameritrade Holding Corp., et al., C.A. No. 1:08-5467