

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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BALTIMORE, MARYLAND 21201
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February 20, 2004

Re: MDL-1586-*In re Mutual Funds Investment Litigation*

Dear Counsel:

As you know, the MDL Panel has today grouped the cases in the separate Mutual Funds Investment Litigation MDLs into a single MDL and has transferred the cases in that MDL to Maryland.¹ Three transferee judges have initially been designated: Judge Andre Davis, Judge Frederick P. Stamp, Jr. (of the Northern District of West Virginia) and myself.² Additional transferee judges in this district may be designated in the future. Judge Catherine C. Blake will assist us from the outset in organizing the MDL, and she will sit with us during hearings and joint scheduling conferences. If the exigencies of the MDL require and her schedule permits, she will be the first judge to be assigned as an additional transferee judge.

An initial hearing will be held on April 2, 2004, at 10:00 a.m., in Courtroom 1A of the federal courthouse in Baltimore. The purpose of this letter is to set forth various matters to be addressed at the hearing.

Proposed structure of the litigation

¹Thus far, the MDL Panel has transferred the cases in seven MDLs to Maryland. The Panel is to consider at its March session whether to transfer one additional related MDL (MDL-1602, *In re Federated Mutual Funds Investment Litigation*). The Panel may also consider some time in the future whether to issue conditional transfer orders in cases brought against Massachusetts Financial Services Co. in the District of Massachusetts.

Because MDL-1602 and the Massachusetts Financial Service cases may eventually be transferred to Maryland, I have asked the staff of the MDL Panel to make sure that counsel in those cases be given personal notice of this letter. I have made the same request in regard to counsel for Invesco Funds Group, Inc., who filed an interested party response in MDL-1586 and appeared at the Panel's session in Sacramento. All of these counsel are invited to the April 2nd hearing and may participate in it to the extent they deem appropriate. Indeed, counsel in any other related pending actions not yet included in MDL-1586 who receive notice of the hearing may attend and participate in it.

²Chief Judge Wilkins has stated that he will make an intra-circuit assignment of Judge Stamp to the District of Maryland for the purposes of the MDL. The assignment (and the MDL Panel's designation of Judge Stamp as a transferee judge) is subject only to the approval of Chief Judge Keeley of the Northern District of West Virginia who currently is out of the country.

We plan to establish different tracks in the MDL, grouped on a fund-by-fund basis. After conferring with you, we may establish sub-tracks, one for securities fraud claims and another for derivative actions. We have not yet decided what tracks should be grouped together, and we look forward to hearing any suggestions you may have on the point. We also have not yet decided what tracks will be assigned to which judge.

We will hold joint hearings on common substantive issues. We have not yet determined whether we will issue joint opinions on common issues or whether each of us will decide substantive issues independently in our respective tracks. Potential recusal problems may affect our determination on this point. In any event, one of us may take the responsibility for writing the first opinion on a particular issue, and the rest of us may decide simply to adopt that opinion as our own in the cases assigned to us.

Judges Blake, Davis, and Stamp have agreed that I should take the lead in deciding scheduling matters for the MDL as a whole. Of course, I will not make any decisions before conferring with them and hearing from you. Each judge may set particular deadlines in tracks assigned to him or her but will not, without consultation with the rest of us, grant any extensions that would affect the overall schedule for the MDL.

Recusal issues

It appears to us that there are two different potential recusal issues presented: (1) the effect of ownership of mutual funds shares that would make the owner a member of a putative plaintiff class, and (2) the effect of ownership of stock in a corporation that runs one of the mutual funds involved in the litigation. We believe these problems can be circumvented (as we understand has been done in other MDLs) by not assigning to a particular transferee judge cases in which he or she has a conflict. We also believe the first problem can be dissolved by a judge's renunciation of any share in a potential class recovery.

If any of you disagree with our analysis of the potential recusal issues, we will hear from you on April 2nd. Also, before assigning particular cases to a particular judge, we will want to make sure that we have complete corporate disclosure lists. We believe we have such lists from the MDL Panel but will take this matter up with you on April 2nd.

Organization of counsel

The judge assigned to a particular track will designate lead counsel for plaintiffs and each defendant within the track. After conferring with counsel and if (as appears likely) it seems advisable to do so, the judge will also appoint committees to handle various tasks within each track.

In addition to what might be called "vertical organization" within each track, we anticipate that there will be "horizontal integration" across the tracks. What we presently envision (subject to hearing from you) is the creation of liaison committees for the plaintiffs and defendants for the MDL as a whole. The committees would be composed of representatives from each of the tracks. The chair of each committee (or her or his designee) would be the primary spokesperson for counsel on common issues during hearings, conferences, and other

communications with the court.

We do not believe it is practical or necessary to appoint anyone as interim liaison counsel for purposes of the April 2nd hearing. In light of the excellent job you did in organizing and making your presentations during the session of the MDL Panel in Sacramento, we hope you will be able to agree upon the lawyers who should speak at the hearing. No designation of lead counsel for a given track will be made at the initial hearing (although we will, of course, consider any suggestions you may have if you have reached agreement prior to the hearing).

Scheduling principles

We will not set a schedule until after the April 2nd hearing. However, we think it useful to outline certain principles we believe (subject to hearing from you) should govern the schedule we ultimately set.

“Trial-ready” date. We believe the cases should be ready for trial no later than 2½ years after the scheduling order is entered. (If any of you believe an earlier date is realistic, we would be interested in hearing your views.)

Early decision on potentially dispositive issues. Defendants should identify any potentially dispositive issues they believe can be resolved by a motion to dismiss. We plan to decide such issues promptly and to consider whether they are appropriate for interlocutory appeal.

Avoidance of sequencing. To keep the proceedings moving along, we want to avoid sequencing the litigation into different phases. For example, unless persuaded to the contrary, we plan to have discovery go forward while motions to dismiss are being briefed, argued, and decided. We also intend to direct all parties to focus (and begin the process of obtaining expert testimony) on damages issues, as well as liability issues, from the outset. We likewise want to encourage the establishment of a structure for mediation so that if and when settlement negotiations become appropriate, unnecessary organizational delay can be prevented.

Critical breakpoints. The initial scheduling order should include deadlines for various critical events, including the designation of lead counsel, filing consolidated amended complaints, resolution of motions to dismiss, resolution of class certification issues, a fact discovery deadline, expert disclosure and discovery deadlines, and a summary judgment motions deadline. We ask you to be prepared to discuss at the April 2nd hearing proposed deadlines for these events and any others you believe must be set in the initial scheduling order.

Possible avoidance of *Lexecon* issues

We look forward to working with counsel who take a constructive approach to problem-solving. In that regard we would like to discuss with you at the very outset of the MDL the advisability of filing consolidated amended class action complaints in the District of Maryland as a means to avoid potential *Lexecon* issues.

Admission of counsel

Attorneys admitted to practice and in good standing in any United States District Court will be admitted *pro hac vice* in these proceedings. If they previously have entered an appearance in a transferred case, they need not file a motion for such admission in this court. (As discussed in the next section, however, if they wish to participate actively in these proceedings, they will have to register in our CM/ECF system.)

CM/ECF

All filing and docketing will be done electronically through the CM/ECF system. We will also use CM/ECF to correspond with you on case related matters. You should follow the instructions and rules contained in our CM/ECF Procedures Manual. The manual and updates to it are available on the District of Maryland's website at: www.mdd.uscourts.gov.

We have asked transferor courts not to send their files or documents from the files to Maryland. We want to avoid unnecessary paperwork. We also want your input before finally deciding how the cases should be organized in CM/ECF. Our present thinking is that there should be a separate docket number assigned for each track, rather than a single docket number for the entire MDL. That approach (which perhaps can be conveniently described as creating a separate CM/ECF "galaxy" for each individual track rather than a single CM/ECF "universe" for the MDL as a whole) would make the various dockets easier and quicker to navigate. Moreover, if there is a single docket for CM/ECF purposes, every lawyer will receive electronic notice of every filing in every track, *e.g.*, a lawyer representing a client only against Putnam would receive notices of filing in the suits against all of the other mutual funds. We believe this is unnecessary and would be overly burdensome for you. (Of course, presumably we would have members of the horizontal liaison committees enter their appearances for CM/ECF purposes in all of the tracks so that they will receive all notices.)

Although we have not yet decided how the different tracks should be handled in the CM/ECF system, you may nevertheless now register in our CM/ECF program. If you intend to participate actively in the MDL, we encourage you to register as soon as possible. You may do so on-line at: <https://www.mdd.uscourts.gov/attyRegb/attorneyAccess.htm> Click on the link for Pro Hac Vice Registration Form, complete the form and click on submit. It may be necessary for court staff to contact you to verify that you are participating in an MDL.

Members of the clerk's office staff will be available at the conclusion of the April 2nd hearing to discuss CM/ECF issues with you and, if time permits, provide training. Additionally, there are regularly scheduled training classes at both the Baltimore and Greenbelt courthouses which you and/or your staff may attend. It is essential that those who will be responsible for electronic filing and docketing fully understand the CM/ECF system and that they be familiar with our practices and procedures.

MDL website

As I have advised many of you by separate letter, a website particular to MDL-1586 is being created on our court website at www.mdd.uscourts.gov. To access the MDL-1586 website, click on "MDLs" on the left-hand side of the court website. The MDL-1586 website currently contains extremely limited material (this letter and certain court contact information).

However, you can observe the type of information the website eventually will contain by perusing the Microsoft MDL website also contained on the court's website.

Applicability of Local Rules

Subject to hearing from you, we believe that our Local Rules and the guidelines and procedures provided in its appendices should apply to these proceedings. The rules and guidelines are available on our court website.

Confidentiality and Sealing Orders

Although perhaps not necessary, it would seem advisable (if possible) for the same form of confidentiality order to be used in all of the cases in all of the tracks. The standard form contained in Appendix D to our Local Rules may provide, at least, a starting point for a common form. We suggest that this may be an issue worthy of consideration by the horizontal liaison committees we anticipate being formed.

We also bring to your attention the procedure for filing sealed documents set forth in Local Rule 105.11 (and the standard form relating to it contained in Appendix D). This procedure is required by Fourth Circuit law.

Maintenance of time records

Any attorneys who believe they may eventually file a fee petition must maintain full and accurate time records. If any fee applications are ultimately filed, we may require them to be in the format set forth in Appendix B to our Local Rules.

Monthly telephone conferences

We anticipate that each of us will hold monthly telephone conferences with counsel in the cases respectively assigned to us. During those conferences we will discuss with you scheduling and other administrative matters and resolve routine disagreements that may have arisen.

Payment for transcripts

We would like to consider the establishment of an arrangement whereby court reporters are adequately and fairly compensated for the work they will do while, at the same time, we assure that transcripts are made publicly available on a timely basis. In several past MDLs those twin goals have been accomplished by counsel agreeing to pay court reporters for an agreed number of copies prior to the placement of a transcript on the public record. We would like to discuss with you the advisability of adopting a similar practice in this MDL, subject to any policy the Judicial Conference may eventually adopt.

Internet depositions

In MDL-1355, *the Propulsid Products Liability Litigation*, Judge Eldon E. Fallon has utilized a means for depositions to be taken over the internet. Information relating to this

practice can be obtained on the website for the Eastern District of Louisiana: www.edla.uscourts.gov. We do not know whether internet depositions would be useful in MDL-1586 but mention the practice to you for your consideration and discussion.

Although, as I mentioned earlier, we are not designating interim lead counsel, we would appreciate as many of you conferring with one another as possible in order to prepare for the April 2nd hearing. We also invite you to submit by letter in advance of the hearing any views you have on the topics I have outlined as well as any other topics you suggest be considered at the hearing. If possible, we ask that you make your submissions on or before March 25, 2004. You may email them to me at MDD_JFMChambers. I will forward them to Judges Blake, Davis, and Stamp.

We look forward to meeting with you on April 2nd.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge

cc: Honorable Catherine C. Blake
Honorable Andre M. Davis
Honorable Frederick P. Stamp, Jr.
Robert Cahn, Esq.
Felicia Cannon, Clerk
Fran Kessler, Chief Deputy
Claudia Gibson, Docketing Supervisor