

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

Feb 11, 2009

FILED
CLERK'S OFFICE

IN RE: FANNIE MAE SECURITIES AND
EMPLOYEE RETIREMENT INCOME SECURITY
ACT (ERISA) LITIGATION

MDL No. 2013

TRANSFER ORDER

Before the entire Panel*: Defendant Federal National Mortgage Association (“Fannie Mae”), with the consent of all Fannie Mae officer and director defendants¹ and underwriter defendants,² has moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of this litigation in the Southern District of New York. Plaintiff in the District of Columbia action does not oppose the motion. Plaintiff in the District of New Jersey action requests that the Panel delay transfer of the District of New Jersey action until his pending motion to remand to state court is decided.

This litigation currently consists of nineteen actions listed on Schedule A and pending in five districts, fifteen actions in the Southern District of New York, and one action each in the District of District of Columbia, the Southern District of Florida, the District of New Jersey, and the Western

* Judge Hansen took no part in the decision of this matter. At oral argument, it was announced that four of the six other Panel members have interests which would normally disqualify them under 28 U.S.C. § 455 from participating in the decision of this matter. Accordingly, the Panel invoked the Rule of Necessity and these six Panel members participated in the decision of this matter in order to provide the forum created by the governing statute, 28 U.S.C. § 1407. *See In re Wireless Telephone Radio Frequency Emissions Products Liability Litigation*, 170 F.Supp.2d 1356, 1357-57 (J.P.M.L. 2001).

¹ Stephen B. Ashley; Dennis R. Beresford; Louis J. Freeh; Brenda J. Gaines; Frederick B. Harvey, III; David Hisey; Karen N. Horn; Robert J. Levin; Thomas Lund; Bridget A. Macaskill; Daniel H. Mudd; Peter Niculescu; Leslie Rahl; John C. Sites, Jr.; Greg C. Smith; Stephen Swad; H. Patrick Swygert; John K. Wulff; Fannie Mae Compensation Committee; and Fannie Mae Benefits Plans Committee.

² Banc of America Securities, LLC; Barclays Capital, Inc.; Bear, Stearns & Co.; Citigroup Global Markets, Inc.; Deutsche Bank Securities, Inc.; E*Trade Securities LLC; FTN Financial Securities Corp.; Goldman, Sachs & Co.; J.P. Morgan Securities, Inc.; Lehman Brothers, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley & Co., Inc.; UBS Securities, LLC; Wachovia Capital Markets, LLC; Wachovia Securities, LLC; and Wells Fargo Securities LLC.

District of Pennsylvania.³

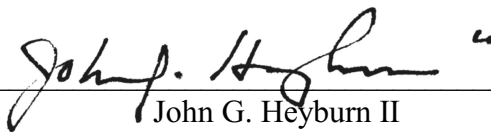
On the basis of the papers filed and hearing session held, we find that these actions involve common questions of fact, and that centralization under Section 1407 in the Southern District of New York will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions allege that Fannie Mae was undercapitalized during the relevant time period, and that defendants concealed this fact from investors in order to raise capital. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

Plaintiff in the District of New Jersey action can present his motion for remand to state court to the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

We are persuaded that the Southern District of New York is an appropriate transferee forum for this litigation. Fifteen actions are already pending in that district and many of the corporate defendants are headquartered in New York.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Southern District of New York are transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Gerard E. Lynch for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

J. Frederick Motz
Kathryn H. Vratil
W. Royal Furgeson, Jr.

Robert L. Miller, Jr.
David R. Hansen*
Frank C. Damrell, Jr.

³ The Panel has been notified that two additional related actions have been filed, one in the District of District of Columbia, and one in the Southern District of Florida. These actions will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

**IN RE: FANNIE MAE SECURITIES AND
EMPLOYEE RETIREMENT INCOME SECURITY
ACT (ERISA) LITIGATION**

MDL No. 2013

SCHEDULE A

District of District of Columbia

Mary P. Moore v. Federal National Mortgage Association Compensation Committee,
et al., C.A. No. 1:08-1825

Southern District of Florida

Hilda Gordon v. Stephen B. Ashley, et al., C.A. No. 9:08-81007

District of New Jersey

Daniel Kramer v. Federal National Mortgage Association, et al., C.A. No. 2:08-5287

Southern District of New York

John A. Genovese v. Stephen B. Ashley, et al., C.A. No. 1:08-7831

Robert M. Rollins v. Lehman Brothers, Inc., et al., C.A. No. 1:08-7938

Nicholas Crisafi, et al. v. Merrill Lynch Fenner Pierce & Smith, Inc., et al.,
C.A. No. 1:08-8008

Fogel Capital Management, Inc. v. Federal National Home Mortgage Association, et al.,
C.A. No. 1:08-8096

Dennis Sandman v. J.P. Morgan Securities, Inc. et al., C.A. No. 1:08-8353

Karen Orkin, et al. v. Merrill Lynch Pierce Fenner & Smith, Inc., et al.,
C.A. No. 1:08-8488

Brian Jarman v. Merrill Lynch Pierce Fenner & Smith, Inc., et al., C.A. No. 1:08-8491

Malka Krausz v. Federal National Mortgage Association, et al., C.A. No. 1:08-8519

Donald W. McCauley v. Merrill Lynch Pierce Fenner & Smith, Inc., et al.,
C.A. No. 1:08-8520

David L. Frankfurt, et al. v. Lehman Brothers, Inc., et al., C.A. No. 1:08-8547

Cheryl Strong, et al. v. Wachovia Capital Markets, LLC, et al., C.A. No. 1:08-8551

Stephen H. Schweitzer, et al. v. Merrill Lynch Pierce Fenner & Smith, Inc., et al.,
C.A. No. 1:08-8609

Lynn Williams, et al. v. Stephen B. Ashley, et al., C.A. No. 1:08-8676

Susan Kraus v. Citigroup Global Markets, Inc., C.A. No. 1:08-9649

Phillip Melton v. E*Trade Securities, LLC, C.A. No. 1:08-9650

MDL No. 2013 Schedule A (Continued)

Western District of Pennsylvania

Leonard Jesteadt, et al. v. Stephen B. Ashley, et al., C.A. No. 2:08-1335