

Monday, December 21, 2009

Darren K. Indyke, Esquire
FTC
Darren K. Indyke, PLLC
301 East 66th Street
New York, New York 10065

Dear Attorney Indyke:

On December 15, 2009, we emailed to you the "Rule 7.5 Notice of Potential Tag-Along Action" which was filed by the New York lawyers representing The Bear Stearns Companies LLC (f/k/a The Bear Stearns Companies Inc.) with the Judicial Panel on Multidistrict Litigation, MDL Docket No. 1963, in the Southern District of New York, with respect to Financial Trust Company, Inc. v. The Bear Stearns Companies Inc., 09-cv-00106, currently pending in the federal District Court of the Virgin Islands, Division of St. Thomas and St. Croix. In the Rule 7.5 Notice, Bear Stearns is requesting the Clerk of the Panel to transfer the FTC Virgin Islands action to the consolidated actions pending in the Southern District of New York before the Honorable Robert W. Sweet pursuant to the Panel's August 18, 2008 Order in In re: The Bear Stearns Companies Inc. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation, MDL-1963 (the "August 18, 2008 Order"). For your convenience, we are sending you another copy of the Rule 7.5 Notice of Potential Tag-Along Action.

We have reviewed the August 18, 2008 Order and are of the opinion that it is more likely than not that the Clerk of the Panel will order the FTC Virgin Islands case to be consolidated with the pending MDL in the Southern District. We enclosing the August 18, 2008 Order for your information and review.

We point out that the criteria for consolidation set forth in the August 18, 2008 Order would seem to dictate a finding of consolidation with respect to the FTC Virgin Islands action:

...These fifteen 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 the litigation. All actions share allegations regarding, inter alia, whether Bear Stearns and certain of its current and former officers and directors knowingly made material misstatements or omissions concerning the company's financial health that misled investors and caused investor losses when the company's stock price fell in March 2008. Centralization

under Section 1407 will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.
(emphasis supplied)

Since FTC's Verified Complaint filed in the District Court of the Virgin Islands makes the same allegations as those set forth in the actions referred to in the August 18, 2008 Order which the Judicial Panel ordered to be consolidated, i.e. that Bear Stearns and certain officers and directors made fraudulent and negligent misrepresentations regarding the Financial Health of Bear Stearns, ultimately leading to losses sustained by FTC, it would be extremely difficult for FTC to oppose transfer and consolidation and be successful.

With respect to the convenience of witnesses, we note that while FTC is a Virgin Islands corporation, Mr. Epstein has a home in New York and you, as the current President of FTC, are a resident of the New York Metropolitan area and not a Virgin Islands resident. Virtually all of the Bear Stearns witnesses would be located in New York, and not in the Virgin Islands.

The case most likely would have pretrial discovery conducted within the MDL context and then be sent back to the Virgin Islands for trial if the claims withstand substantive motion practice.

We are advising you by this letter that FTC should retain counsel with offices in New York with respect to the multidistrict litigation pending in the Southern District. Stateside counsel will either have familiarity with the numerous docket entries in the multidistrict litigation or will need to sift through and review the most pertinent ones. We are enclosing a current docket sheet of MDL Docket No. 1963, showing 145 docket entries. Our firm does not have the capacity or resources to catch up to this task in the limited time available and, of course, the costs of such a review unless conducted by paralegals and junior associates on the first filtering will be quite high. In the event that FTC wishes to try to oppose an order of transfer if entered, it would be more economical and efficient for Stateside counsel to prepare such a pleading, have our firm add the limited local content and then have Stateside counsel file it.

The Defendant has also moved for an enlargement of time within which to answer, move, or otherwise respond to the Verified Complaint and we have attached a copy. I had tried to negotiate a shorter time while waiting to hear from you last week but the defendant lost patience. It is very likely that this motion will be granted regardless of our opposition

If the FTC Virgin Islands case is transferred to the Southern District, it would not be feasible for our small firm, located in the Virgin Islands, to continue to represent FTC in the multidistrict litigation without retention of experienced securities counsel with offices in New York. As you know, the letter retainer agreement dated May 26, 2009 entered into between our firm and FTC specifically provides that our firm was retained only to file a lawsuit in the

Virgin Islands on behalf of FTC, and we did not agree to undertake representation of FTC in any other jurisdiction. Moreover, in that letter, we also expressly stated our understanding that because our firm did not have specialized securities law expertise it was our understanding that our firm would conduct the lawsuit "in association with a Stateside law firm experienced in securities and complex business law retained by Client". To date, our firm has not been provided with any meaningful assistance from a Stateside law firm.

While our firm is involved in other multi-district litigations in the Southern District, we are associated with Stateside firms in such litigations for the very reason that we required additional manpower and resources to represent our clients effectively.

We will forward the Order issued by the Judicial Panel regarding its decision on whether the FTC Virgin Islands case is to be transferred to the MDL pending in the Southern District upon receipt. We strongly suggest that you retain New York counsel immediately to take whatever legal actions are necessary that assuming transfer and consolidation will be ordered. A notice of opposition to the transfer order has to be filed within 15 days, after which the Panel will issue a briefing schedule. An opposition to the motion for an extension of time to answer would have to be filed in the next few days should you wish but we believe it to be a fruitless endeavor.

I have still not heard from you on outstanding issues and think these recent critical developments warrant a prompt response.

Best regards,
Jack

Enc.