

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE:)	
)	
NATIONAL CENTURY FINANCIAL)	MDL Docket No. 1565
ENTERPRISES, INC., INVESTMENT)	
LITIGATION)	
)	

**PLAINTIFF/DEFENDANT REBECCA S. PARRETT’S RESPONSE AND
MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR TRANSFER
AND COORDINATION OR CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407**

Plaintiff/Defendant Rebecca S. Parrett¹ (“Parrett”) hereby responds to and opposes the Motion for Transfer and Coordination or Consolidation Pursuant to 28 U.S.C. § 1407 (“Transfer Motion”) and Memorandum of Law in Support thereof filed by Defendants Bank One, N.A., Bank One Corp., Banc One Capital Markets, Inc. (collectively “Bank One”), JPMorgan Chase Bank (“JPMorgan”), Credit Suisse First Boston LLC, Deloitte & Touche LLP, Pricewaterhouse-Coopers LLP, Thomas G. Mendel, Harold W. Pote and Eric R. Wilkinson (collectively, “the moving Defendants”) as follows.

¹ Parrett is the plaintiff in *Parrett v. Bank One, N.A.*, No. CIV 03-541 PHX-MHM (D. Ariz.), and a defendant in *City of Chandler v. Bank One*, No. CIV 03-1220 PHX-ROS (D. Ariz.), *Mahoney v. Andrews*, No 03-467-v-25 (M.D. Fla.), and *Bank One, N.A. v. Poulsen*, No. 03-394 (S.D. Ohio).

Responses to Moving Defendants' Averments

1. In regard to the Moving Defendants' averment in ¶ 1 of the Transfer Motion, Parrett denies that the National Century Financial Enterprises, Inc. ("NCFE") "Cases that Defendants seek to consolidate or coordinate all arise out of the collapse of NCFE and its affiliates in November 2002." While NCFE's collapse is a common fact, these cases arise out of the Moving Defendants own culpable conduct, separate and apart from NCFE's collapse.

2. Parrett admits the averments in ¶ 2 of the motion except that she denies that NCFE issued any notes. The notes the Moving Defendants refer to were issued by NPF VI, Inc. and NPF XII, Inc., which were separate, but affiliated corporate entities.

3. In regard to the averments in ¶ 3 of the motion, Parrett admits that NCFE and its affiliates filed for bankruptcy protection in the Southern District of Ohio in November, 2002, but she denies that is the basis for multiple lawsuits against the Moving Defendants including two in Ohio. One of the two Ohio suits was brought by, not against, Bank One, which is one of the Moving Defendants. The other lawsuits were brought against the Moving Defendants because of their own culpable conduct, separate and apart from NCFE's collapse.

4. Parrett denies the averments in ¶ 4 of the motion for the reason that the noteholder lawsuits are not against NCFE, but are against the Moving Defendants based on their own culpable conduct, and, again, the notes held by the plaintiff noteholders were not issued by NCFE, but by the NPF entities.

5. In regard to the averments in ¶ 5 of the motion, although Parrett admits that some, but not all, of the "NCFE Cases" allege that some, but not all, of NCFE's principals and the Moving Defendants orchestrated a fraud on investors, she denies that all of the NCFE Cases allege that she was so involved. In fact, she is not even a party to three of the so-called "NCFE Cases" and she is the plaintiff in one of the NCFE Cases in which she makes such allegations and claims

against the Moving Defendants, including three of the other NCFE directors, as well as against other NCFE officers and directors.

6. Parrett denies the averments in ¶ 6 of the motion. Again, as noted above, and as acknowledged in this paragraph of the motion, Parrett, who brought one of the cases against the Moving Defendants, is neither a noteholder, healthcare organization nor bondholder. Nor is Bank One, and as noted below, Bank One had no authority whatsoever to bring the action it filed in Ohio, which has been indefinitely stayed by the district court there.

7. Parrett admits the averment in ¶ 7 of the motion.

8. Parrett denies the averments in ¶ 8 of the motion. The NCFE claims involve different claims and all of the cases do not involve all of the claims described in this paragraph. For example, the two Arizona actions (*Parrett* and *City of Chandler*) involve only state-law and no federal-law claims under RICO or the Securities & Exchange Act. Both of the New Jersey actions (*MetLife* and *Lloyds*) relate solely to NPF XII notes. The Florida action (*Mahoney*) has little or nothing to do with any relevant issues in the other cases. The other Ohio action (*Pharos*) relates to the sale and purchase of NCFE preferred stock. In addition, although Parrett admits that there are common allegations of fraud concerning the operation of NCFE's business, she denies that these "claims stem from the collapse of NCFE," again, because insofar as the claims against the Moving Defendants are concerned, those claims arise out of the Moving Defendants' own independent culpable conduct.

9. In regard to the averments in ¶ 9 of the motion, while Parrett admits that there are some common factual questions that arise out of the causes of NCFE's failure, she denies that those factual questions are too complex to be handled by each local district court or that all of the NCFE cases involve losses allegedly sustained by investors — Parrett is not an NCFE investor and she sustained no losses as an investor.

10. In regard to the averments in ¶ 10 of the motion, Parrett denies that all of the NCFE actions involve sufficient common questions of fact to meet the requirements of 28 U.S.C. § 1407(a) for the reasons set forth below.

11. Parrett denies the averments in ¶ 11 of the motion for the reasons set forth below, except that she admits that she would enjoy financial savings from the efficiency and convenience of having discovery coordinated and consolidated, provided the cases are not transferred to an inconvenient district.

12. In regard to the averments in ¶ 12 of the motion, Parrett denies that “the factual underpinnings of the NCFE Cases are the same,” but she admits that “much of the discovery in each of the cases will overlap.”

13. Parrett denies the averments in ¶ 13 of the motion. There is little or no possibility of inconsistent pretrial rulings on motions pending in these cases because each such motion is unique to its particular case and is based on facts and issues unique to that case.

14. In regard to the averments in ¶ 14 of the motion, Parrett admits that a few, but certainly far from a majority, of the parties and witnesses are located within the Southern District of Ohio. However, many witnesses and a substantial number, if not the majority, of the parties who are plaintiffs in these cases are located in the District of Arizona.

15. Although Parrett admits the averments in ¶ 15 of the motion, she denies that these facts are relevant to the motion because neither NCFE nor any of its bankruptcy debtor affiliates are parties to these cases, most, if not all of the Moving Defendants have expressly stated in the transfer motion, as well as in the removal notices in the Arizona cases, that they do not consent to the bankruptcy court’s jurisdiction or to a jury trial of these cases in that court, and, as noted herein, the Bank One Ohio action has been indefinitely stayed and will probably be dismissed shortly.

16. Parrett denies the averments in ¶ 16 of the motion for the reasons stated herein. The Southern District of Ohio is certainly not centrally located to Parrett or any other Arizona party or witness, and, therefore, it is not the “most appropriate transferee forum for the NCFE Cases.”

17. Parrett denies the averments in ¶ 17 of the motion. While Judge Graham may be an experienced and highly qualified jurist, the case pending in his court, which was improperly filed by Bank One, has been indefinitely stayed and is about to be dismissed. Thus, there would be no reason to transfer any of the other “NCFE Cases” there.

Reasons and Grounds for Opposing the Transfer Motion

Parrett responds to and opposes the Transfer Motion on the grounds, for the reasons and authority set forth in the separate responses and memoranda that the City of Chandler, et al. (“Chandler”), and Metropolitan Life Insurance Company, et al. (“MetLife”) and Lloyds TSB Bank, PLC (“Lloyds”) have filed in opposition to the transfer motion, with which Parrett concurs, adopts and incorporates herein by reference,² except for the following.

1. Because of potential financial savings to her, Parrett does not oppose coordination or consolidation for purposes of discovery only, provided that the cases are not transferred to a district that is inconvenient to her; and

²Although Parrett has not had the opportunity to review the final draft of Chandler’s response, which Parrett understands will be filed on August 4th, Parrett’s counsel conferred with Chandler’s counsel on August 1st about the positions and arguments set forth in its response. Parrett is concurring and adopting Chandler’s response based and in reliance on these verbal representations. Although Parrett also has not had the opportunity to review the final version of MetLife’s response, MetLife has provided her with a draft copy of its proposed response, on which Parrett bases her concurrence and adoption thereof, except for its argument that if transfer is deemed appropriate, New Jersey should be the transferee district.

As noted in the Transfer Motion, NCFE and its affiliated companies previously filed bankruptcy petitions, which are presently pending in the Southern District of Ohio. Recently NCFE, as debtors-in-possession, filed a request to employ the law firm of Gibbs and Bruns, L.L.P., which is Chandler’s co-counsel, as special counsel for the NCFE bankruptcy debtors. The United States Trustee, along with Bank One, Parrett and others, are opposing their request because of the obvious conflicts of interest involved and have filed objections in the bankruptcy proceedings to that effect. By joining with Chandler in its opposition to the Transfer Motion, Parrett is not waiving, and expressly reserves, her right to raise this conflict-of-interest issue at a later date.

2. If the Panel deems that pretrial coordination or consolidation is appropriate for either part of all pretrial proceedings, the cases should be consolidated in or transferred to the District of Arizona for the reasons set forth herein and in Chandler's memorandum.

Otherwise, Parrett concurs with all the reasons set forth and authority cited in Chandler's and MetLife and Lloyds' responses for denying the Transfer Motion, including, in particular, the following.

First, the Moving Defendants are obviously trying to delay these cases, at least the Arizona cases, and to prevent Parrett, as well as Chandler, from litigating them in their forum of choice where Parrett and most of the Chandler plaintiffs are residents and/or citizens and where many of the acts alleged in the Arizona cases occurred.

All of the Moving Defendants, except for Mendell, Pote and Wilkinson, were the same Defendants who purportedly joined with JPMorgan and Bank One, respectively, in exercising their ability to remove the Arizona cases from state court without the concurrence of all defendants. Then, before the Arizona district court has even had the opportunity to rule on the remand motions in those cases, those defendants moved for stays in the Arizona cases pending the resolution of the Transfer Motion, to try to stop the Arizona district court from ruling on subject-matter jurisdiction and the improvidency of their removal in violation of Rule 1.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425 (2001) and Ninth Circuit case law. *E.g.*, *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp.2d 804, 809 (N.D. Cal. 1998); *Tortola Restaurants, L.P. v. Kimberly-Clark Corp.*, 987 F. Supp. 1186, 1188-89 (N.D. Cal. 1997); *Villareal v. Chrysler Corp.*, No. C-95-4414, 1996 WL 116832, at *1 (N.D. Cal. Mar. 12, 1996).

Second, the Moving Defendants are engaging in improper forum-shopping because, as explained in Chandler's and Met-Life's responses, the transferee court that they propose, the

Southern District of Ohio, where Bank One has filed a preemptive action, *Bank One, N.A. v. Poulsen, et al.*, has already stayed that action, and it will probably be dismissed because it was filed without any authorization by the real parties in interest, who have since instructed Bank One to dismiss it.

In light of these circumstances, there could hardly be any clearer example of indefensible delaying tactics and improper forum-shopping by Bank One, JPMorgan and the other Moving Defendants. They should not be rewarded by granting their Transfer Motion to perpetuate such injudicious and highly prejudicial conduct.

Third, Parrett is a party in only half of the active so-called “NCFE cases” that the Moving Defendants ask to be consolidated for pretrial proceedings. Disregarding the Bank One Ohio case, she is a party in only three of the six cases involved in the Transfer Motion. She is a plaintiff in one of the Arizona cases and a defendant in the other Arizona case and the Florida case, a shareholder class action involving e-Medsoft.com, which is not a party to any of the other NCFE cases, and which involves totally unrelated claims and issues. Parrett is not a party in the New Jersey *Lloyds TSB Bank, PLC v. Bank One, N.A.*, the New Jersey *Metropolitan Life Ins. Co. v. Bank One, N.A.* or the Ohio *Pharos Capital Partners, L.P. v. Deloitte & Touche, L.L.P.* cases.

Fourth, remand motions in the *Parrett* and *City of Chandler* cases, which were improvidently removed from Arizona state court, as well as a motion to dismiss for lack of subject-matter jurisdiction in the *City of Chandler* case, are presently pending in Arizona. There is no diversity-of-citizenship jurisdiction and no federal-law claims jurisdiction involved in those cases. The only basis for removal and federal jurisdiction alleged by JPMorgan and Bank One in those cases, respectively, is bankruptcy relatedness.

Accordingly, Parrett filed a motion to remand in her case, *Parrett v. Bank One*. She also filed a motion to dismiss for lack of subject-matter jurisdiction in the *City of Chandler* case, and both she and Chandler filed remand motions in that case. Briefing on the remand motion in the *Parrett* case has been completed, but not on either of the motions in the *City of Chandler* case, and therefore, none of these motions has been resolved. However, any one of those motions if granted, would moot the transfer motion.

Fifth, there are far more issues, both issues of fact and issues of law, in the Arizona cases, particularly the one in which Parrett is the plaintiff, that are unique to those cases than issues that are common to all the “NCFE cases.” Other than the jurisdiction and remand issues, all the claims and defenses, as well as the prospective cross-claims that Parrett intends to file in the *City of Chandler* case, involved in the Arizona cases are governed by Arizona law and not federal law or the state law involved in any of the other “NCFE cases.”

In addition to the authority cited in Chandler’s and Met-Life’s memoranda, *In re George Andrew Bratton Litig.*, 206 F. Supp. 2d 1366 (J.P.M.L. 2002), and *In re Plasma Display Panels Patent Litig.*, 196 F. Supp. 2d 1378 (J.P.M.L. 2002), also exemplify this Panel’s practice to reject motions to consolidate and transfer in such situations, where there are only a minimal number of actions involving common parties and common facts and issues.

Finally, except for consolidating these cases for discovery, the prejudice to Parrett from transferring her action to a district thousands of miles from Arizona far outweighs any benefit espoused by the moving Defendants.

Conclusion

Based on the foregoing, Parrett requests that the Panel deny the Transfer Motion, other than for the coordination and consolidation of discovery, provided that cases are not transferred to a district that is inconvenient to her; or in the alternative, if the Panel grants the Transfer

Motion for all pretrial proceedings, it should designate the District of Arizona as the transferee district.

Dated: August 2, 2003

Respectfully submitted,

WILLIAM A. MILLER, PLLC

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Attorney for Rebecca S. Parrett

Copies of the foregoing mailed
this 2nd day of August, 2003, to
all parties set forth on the attached
Master Service List.

By _____

Parrett Response to MDL Transfer Motion.doc