

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:10-cv-23235/HOEVELER

DAVID KARDONICK, individually and on behalf
of all others similarly situated and the general public,

Plaintiff,

v.

JPMORGAN CHASE & CO. and CHASE BANK
USA, N.A.

Defendants.

SECOND DECLARATION OF ROBERT D. WICK

Robert D. Wick hereby declares as follows:

1. I am a partner at Covington & Burling LLP, counsel for Chase Bank USA, N.A. ("Chase"). I submit this second declaration in support of Chase's Motion For Show Cause Order.

The West Virginia Attorney General Action

2. In August 2011, Respondents filed a Complaint in *State of West Virginia ex rel. McGraw v. JPMorgan Chase & Co. et al.*, Civil Action No. 11-C-94-N (W. Va. Cir. Ct. filed Aug. 16, 2011). Chase was served with the Complaint on September 1, 2011. On September 30, 2011, Chase filed a Notice of Removal to remove the case to the U.S. District Court for the Southern District of West Virginia. On October 27, 2011, the West Virginia Attorney General filed a Motion to Remand the case to the Circuit Court of Mason County, West Virginia. On December 2, 2011, Chase filed an opposition to the West Virginia Attorney General's Motion to Remand.

3. On February 10, 2012, the U.S. District Court for the Southern District of West Virginia granted the West Virginia Attorney General's Motion to Remand. *See West Virginia ex rel. McGraw v. JPMorgan Chase & Co.*, 842 F. Supp. 2d 984 (S.D. W. Va. 2012). Following the court's decision, on April 17, 2012, the West Virginia Attorney General, through his outside counsel, served interrogatories and requests for production of documents on Chase.

4. On May 21, 2012, Chase served responses and objections to the West Virginia Attorney General's interrogatories and requests for production. A true and correct copy of Chase's responses and objections to the West Virginia Attorney General's requests for production is attached hereto as Exhibit G and a true and correct copy of Chase's responses and objections to the West Virginia Attorney General's interrogatories is attached hereto as Exhibit

H. Chase's objections stated that this Court's anti-suit injunction prohibits the West Virginia Attorney General and his counsel from litigating released claims, including discovery with respect to those claims. See Exhibit G at 6, 10, 19, and 21; Exhibit H at 12, 13.

5. On September 11, 2011, at the final approval hearing that this Court conducted on the settlement in the above-captioned action (the *Kardonick* action), Richard Golomb of Golomb & Honik orally informed me that his firm would be withdrawing from the West Virginia action.

The Hawaii Attorney General Action

6. In April 2012, Respondents filed a Complaint in *State of Hawaii ex rel. Louie v. JPMorgan Chase & Co. et al.*, Civil Action No. 12-10985-04 (Haw. Cir. Ct. filed April 12, 2012). On May 17, 2012, Chase filed a Notice of Removal to remove the case to the U.S. District Court for the District of Hawaii. On June 15, 2012, the Hawaii Attorney General filed a Motion to Remand the case to the First Circuit Court of Hawaii.

7. As of the execution of this declaration, briefing is not yet complete on the Hawaii Attorney General's Motion to Remand.

8. As of the execution of this declaration, the Hawaii Attorney General has not served discovery requests on Chase.

The Mississippi Attorney General Action

9. In June 2012, Respondents filed a Complaint in *State of Mississippi ex rel. Hood v. JPMorgan Chase & Co. et al.*, Civil Action No. G2012-1085 T/1 (Miss. Chan. Ct. filed June 28, 2012). On August 7, 2012, Chase filed a Notice of Removal to remove the case to the U.S. District Court for the Southern District of Mississippi. On September 6, 2012, the Mississippi Attorney General filed a Motion to Remand the case to the Chancery Court of the

First Judicial District of Hinds County, Mississippi. Briefing on this Motion has been stayed pending the outcome of the decision of the U.S. Court of Appeals for the Fifth Circuit in *Mississippi ex rel. Hood v. AU Optronics Corp.*, No. 12-60704 (5th Cir.).

10. Accordingly, as of the execution of this declaration, briefing is not yet complete on the Mississippi Attorney General's Motion to Remand.

11. As of the execution of this declaration, the Mississippi Attorney General has not served discovery requests on Chase.

Chase's Requested Stipulation

12. On April 17, 2012, counsel for Chase wrote to counsel for the West Virginia Attorney General. The letter is attached hereto as Exhibit I. It asked the West Virginia Attorney General to enter into an appropriate stipulation confirming that he will comply with the injunction contained in the *Kardonick* final approval order and attached a proposed stipulation. On May 30, 2012, counsel for the West Virginia Attorney General responded with a counterproposal and a letter stating that in the Attorney General's view the injunction does not apply to claims brought by states. A copy of the letter is attached hereto as Exhibit J. The letter was copied by email to Respondent Baron & Budd.

13. Later that same day (May 30, 2012), counsel for Chase wrote an email asking whether the West Virginia Attorney General was willing to disclaim any intent to seek a monetary recovery payable to consumers who were members of the settlement class. A copy of Chase's email is attached hereto as Exhibit K. Chase received no response from the West Virginia Attorney General or Respondent Baron & Budd.

The Attorneys General's Objection to the *Esslinger* Final Approval Order


14. In July and August 2012, the attorneys general of West Virginia, Hawaii, and Mississippi filed objections to a proposed order granting final approval of a class action settlement in *Esslinger v. HSBC Bank Nevada, N.A.*, No. 10-cv-2313-BMS (E.D. Pa.) (Dkts. # 84, 93, 94). The attorneys general objected to the proposed order granting final approval on the grounds that the settlement release and injunction allegedly could not apply to claims pending in the attorneys general's pending actions against the settling defendant, HSBC. The Complaints in those actions are virtually identical to the Complaints that the same state attorneys general have filed against Chase.

15. Upon reviewing the positions that the attorneys general had taken in the *Esslinger* litigation, Chase drafted and filed its Motion For Show Cause Order.

16. A true and correct copy of the Transcript of Fairness Hearing in the *Esslinger* litigation is attached hereto as Exhibit L.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 26, 2012


Robert D. Wick