

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATATREASURY CORPORATION	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 2-06CV-72-DF
	§	
WELLS FARGO & COMPANY, <i>et al.</i>	§	
Defendants.	§	

**DEFENDANTS COMPASS BANK, COMPASS BANCSHARES, INC., FIRST
HORIZON NATIONAL CORPORATION, AND FIRST TENNESSEE BANK
NATIONAL ASSOCIATION'S RESPONSE TO MOTION FOR CONSOLIDATION**

Defendants Compass Bank, Compass Bancshares, Inc. (jointly, the “Compass Defendants”), First Horizon National Corporation (“First Horizon”), and First Tennessee Bank, National Association (“First Tennessee”) file this response to Plaintiff’s Motion for Consolidation. In support of this response and in the interest of brevity, the Compass Defendants, First Horizon, and First Tennessee rely on and incorporate the arguments and authorities presented in Defendants’ Response to Plaintiff’s Motion for Consolidation, Docket No. 199, filed on June 22, 2006. The Compass Defendants, First Horizon, and First Tennessee further state as follows:

Plaintiff DataTreasury Corporation (“DTC”) asserts that the propriety of consolidation is a foregone conclusion simply because it has sued some of the defendants in the other actions. DTC, however, ignores the fundamental unfairness to the Compass Defendants, First Horizon, and First Tennessee -- four of the smaller defendant entities -- that will flow from consolidation. “The systemic urge to aggregate litigation must not be allowed to trump our dedication to individual justice, and we must take care that each individual plaintiff’s and defendant’s cause

not be lost *in the shadow of a towering mass litigation.*” *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993)(emphasis added). Consolidation may not be used as a means for increasing the opponent’s cost of litigation by making the opponent to partake in discovery or other proceedings that are not relevant to their case. *Id.* at 374.

Numerous defendants -- including the Compass Defendants, First Horizon, and First Tennessee -- are new to the DTC patent litigation arena. Forty-eight defendants in this action are not parties to the cases which DTC now seeks to consolidate with this one. They have not participated in whatever has happened in those cases. All that has occurred as to those defendants is that a complaint has been filed against them and they have filed or joined a motion to dismiss.

Forcing such defendants to protect their rights and present their defenses in a case with 56 total defendants is difficult enough. To consolidate the current action with cases that have been pending for years, in which discovery has already begun, and in which preliminary infringement and invalidity contentions have already been exchanged would change a difficult situation into a virtually impossible one. Consolidation would not serve the interests of the Court nor the parties that have been brought before it.

The Compass Defendants, First Horizon, and First Tennessee respectfully request that DTC’s Motion for Consolidation be denied.

