

SPILLARS v. METROPOLITAN LIFE INS. CO.

18-CVS-23038, 18-CVS-22954, 18-CVS-24234, 19 CVS 5033, 18-CVS-19512, 19 CVS 12902

NORTH CAROLINA SUPERIOR COURT, MECKLENBURG COUNTY

September 9, 2019

Reporter

2019 NCBC Motions LEXIS 522 *

MARIA SPILLARS and JAMES OVERTURF, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY d/b/a WALL STREET CAPITOL; MSI FINANCIAL SERVICES, INC. f/k/a METLIFE SECURITIES, INC. d/b/a WALL STREET CAPITOL; and F. LANE WILLIAMSON, ADMINISTRATOR OF THE ESTATE OF RICHARD SISKEY, Defendants.; COUNTY OF MECKLENBURG SHELLEY MARTIN, CAROLYN CROZIER, THOMAS J. CROZIER, JR. AND THOMAS J. CROZIER, III, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY d/b/a WALL STREET CAPITOL; MSI FINANCIAL SERVICES, INC. f/k/a METLIFE SECURITIES, INC. d/b/a WALL STREET CAPITOL; and F. LANE WILLIAMSON, ADMINISTRATOR OF THE ESTATE OF RICHARD SISKEY, Defendants.; EDMUND H. MACHEN and LORRAINE W. MACHEN, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY d/b/a WALL STREET CAPITOL; MSI FINANCIAL SERVICES, INC. f/k/a METLIFE SECURITIES, INC. d/b/a WALL STREET CAPITOL; and F. LANE WILLIAMSON, ADMINISTRATOR OF THE ESTATE OF RICHARD SISKEY, Defendants.; CHARLOTTE DREIBELBIS and DEBORAH MONNETT, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY d/b/a Wall Street Capitol; MSI FINANCIAL SERVICES, INC. f/k/a MetLife Securities, Inc. d/b/a Wall Street Capitol, and JOHN D. PHILLIPS, Defendants.; DONALD B. OLIN, Plaintiff, v. METROPOLITAN LIFE INSURANCE COMPANY; MSI FINANCIAL SERVICES, INC. formerly known as METLIFE SECURITIES, INC.; BENJAMIN LOWDER, JR.; and GARY HAMMOND, Defendants.; ANTHONY WILLIAM PACKER and) KENT KALINA, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY d/b/a WALL STREET CAPITOL; MSI FINANCIAL SERVICES, INC. f/k/a METLIFE SECURITIES, INC. d/b/a WALL STREET

CAPITOL; and F. LANE WILLIAMSON, Administrator of the Estate of Richard C. Siskey, Defendants.

Type: Motion

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Title

DEFENDANTS METROPOLITAN LIFE INSURANCE COMPANY AND MSI FINANCIAL SERVICES, INC.'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PARTIAL STAY OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME

Text

[*1] Defendants Metropolitan Life Insurance Company ("MLIC") and MSI Financial Services, Inc., formerly known as MetLife Securities, Inc. ("MMLIS") (collectively, "MetLife"), pursuant to Rule 26(d) of the North Carolina Rules of Civil Procedure, Rule 9.1(b) of the North Carolina Business Court and the inherent power of the Court, submit this Memorandum in Support of Motion for Partial Stay. MetLife respectfully requests that the Court exercise its discretion in the six above-captioned actions (the "Actions") to stay the parties' pretrial procedural obligations and partially stay discovery, to align the schedules and obligations of the parties in the Actions with those schedules and obligations in six related cases ("Related Cases") in which a partial stay has previously

been entered.

For the reasons set forth below, the requested stay will serve the interests of efficiency and economy for the Court and the parties by enabling a coordinated resolution of issues that will facilitate orderly case progression, and allow for a more efficient and coordinated approach to discovery, among the Actions and Related Cases.

In the alternative, MetLife requests that the Court grant a 60-day extension [*2] of MetLife's time to serve objections and responses to pending discovery in the Actions.

PROCEDURAL AND FACTUAL BACKGROUND

A. The Six Related Cases Have Been Partially Stayed.

Between April 26, 2018 and May 7, 2018, eight plaintiffs represented by the same counsel as Plaintiffs in the Actions filed four lawsuits concerning the alleged Ponzi scheme activities of Richard C. Siskey.¹ These matters and eight other matters overlap significantly with each other as well as this action in terms of claims, allegations, issues, and defenses.

On June 6, 2018, MetLife filed motions for a 60-day stay of proceedings in the first four cases due to (a) an anticipated global settlement in connection with parallel bankruptcy proceedings that would result (and did result) in substantial [*3] distributions to the plaintiffs in those cases and (b) the likelihood that rulings on motions to dismiss would eliminate or narrow issues and claims. ECF No. 9.² On June 8, 2018, Business Court Judge Louis A. Bledsoe held a status conference at which he ordered that discovery and other deadlines be stayed until July 6, 2018. ECF No. 17, P 6.

On July 6, 2018, Judge Bledsoe held a second conference at which counsel for the defendants in the first four cases and two more recently filed cases³ forecasted their arguments on motions to dismiss. Following the status conference, Judge Bledsoe stayed "all discovery and other pretrial activity" in the first six Siskey-related cases with the "limited exception" of "(i) [*4] propounding written discovery, (ii) objecting to written discovery, (iii) negotiating agreements concerning the scope of written discovery, and (iv) seeking the Court's involvement concerning objections to written discovery...." ECF No. 21, P 8. The Court further ordered that "[i]n contrast to objections to written discovery, the Court will not require the parties to produce documents or provide written responses to written discovery at this time, although the parties may agree to do so by consent." *Id.*

On August 20, 2018, MetLife and other defendants filed motions to dismiss in the first six cases. ECF No. 26. On September 4, 2018, the plaintiffs in those cases filed motions to strike MetLife's motions to dismiss and to seek discovery before requiring the plaintiffs to brief the motions to dismiss in the first six cases. ECF No. 29. The same day, Judge Bledsoe, *sua sponte*, issued an Order Extending Stay. Judge Bledsoe ordered, in pertinent part:

having given a 'quick peek' at the arguments set forth in Defendants' Motions to Dismiss, which appear to potentially be case dispositive, the Court concludes, in the exercise of its discretion, that a stay of all discovery and other [*5] pretrial activity in [the first six cases], with the limited exception permitted in the July 12 Stay Order, is appropriate pending the Court's determination of Defendants' Motions to Dismiss.

ECF No. 32. By separate order the same day, Judge Bledsoe denied the plaintiffs' request for discovery prior to completion of briefing on motions to dismiss. ECF No. 31.

B. Plaintiffs Filed Amended Pleadings and Other Motions, Which Delayed Proceedings on Motions to Dismiss.

¹ (1) *James Aldridge v. Metropolitan Life Insurance Company, et al.*, 18-CVS-1050 (Union County); (2) *Katherine Aldridge v. Metropolitan Life Insurance Company, et al.*, 18-CVS-1124 (Union County); (3) *John "Kris" Kelly, et al. v. Metropolitan Life Insurance Company, et al.*, 18-CVS-4978 (Guilford County); and (4) *Andrew Peterson v. Metropolitan Life Insurance Company, et al.*, 18-CVS-528 (Lincoln County).

² Unless otherwise stated, references to docket entries are to the docket in *James Aldridge v. Metropolitan Life Insurance Company, et al.*, 18-CVS-1050.

³ Two additional Siskey-related cases were designated to the North Carolina Business Court before the July 6, 2018 hearing: (5) *James Williams, et al. v. Metropolitan Life Insurance Company, et al.*, 18-CVS-307 (Yadkin County); (6) *Adam Goulet v. Metropolitan Life Insurance Company, et al.*, 18-CVS-12201 (Mecklenburg County).

On September 26, 2018, the plaintiffs in the first six cases filed amended complaints rather than filing briefs in opposition to motions to dismiss. ECF No. 37. On December 3, 2018, MetLife and other defendants filed renewed motions to dismiss the amended complaints in each case. ECF No. 52.

On October 9, 2018, Plaintiffs' counsel filed a seventh related case: *Donald B. Olin v. Metropolitan Life Insurance Company, et al.*, 18-CVS-19512, which was designated to the North Carolina Business Court on November 20, 2018. Defendants filed motions to dismiss promptly in the *Olin* case so that briefing and oral argument could be completed without delay along with the first six cases. Defendants agreed to extend the deadline [*6] for the plaintiffs to file memoranda in opposition to Defendants' motions to dismiss on January 25, 2019 so that the plaintiffs would have 53 days to file response briefs. ECF No. 42.

On January 2, 2019, Judge Bledsoe noticed the hearing on motions to dismiss for March 6, 2019 and requested that the parties confer regarding the proposed hearing schedule. ECF No. 56.

On January 24, 2019, the day before the plaintiffs' memoranda in opposition to motions to dismiss were due, the plaintiffs filed a motion for an extension of time to delay indefinitely the deadline to file memoranda in opposition to motions to dismiss and sought to have the Bankruptcy Court address a limited subset of the issues already briefed by the defendants before this Court. ECF No. 57. The day before, on January 23, 2019, the plaintiffs had filed in Bankruptcy Court proceedings relating to four Siskey companies a "Motion for Declaratory Relief as to Creditors' Claims for Damages Against MetLife Prior to the Settlement Opt-In Deadline." *Id.* P 14. Defendants opposed the motion, which would have required that the parties start over in briefing certain of the motion to dismiss issues and would have delayed indefinitely progress on the pending motions to dismiss. ECF No. 60.

On January 29, 2019, Judge Bledsoe denied the plaintiffs' motion for an indefinite extension, but granted an extension from January 25 to February 6, 2019 for the plaintiffs [*7] to file response briefs on motions to dismiss. ECF No. 63.

On February 15, 2019, the first seven Siskey-related lawsuits were reassigned to Judge Robinson and the

hearing on motions to dismiss occurred on March 6, 2019. ECF No. 66. This Court has ruled on motions to dismiss pursuant to Rule 12(b)(1). The motions to dismiss pursuant to Rule 12(b)(6) remain pending, and the Court has indicated that rulings on the remaining issues are forthcoming. ECF No. 76.

C. New Plaintiffs Filed Additional Lawsuits

Between November 2018 and June 2019, Plaintiffs' counsel filed six additional Siskey-related lawsuits that have been designated to the North Carolina Business Court: (8) *Craig Brewer v. Metropolitan Life Insurance Co. et al.*, 18-CVS-21685 (Mecklenburg County)⁴; (9) *Maria Spillars, et al. v. Metropolitan Life Insurance Co., et al.*, 18-CVS-23038 (Mecklenburg County); (10) *Shelly Martin, et al., v. Metropolitan Life Insurance Co., et al.*, 18-CVS-22954 (Mecklenburg County); (11) *Charlotte Dreibelbis et al. v. Metropolitan Life Insurance Co., et al.*, 19-CVS-5033 (Mecklenburg County); and [*8] (12) *Anthony William Packer, et al. v. Metropolitan Life Insurance Co., et al.*, 19-CVS-12902 (Mecklenburg County). Defendants have filed motions to dismiss in each of these cases (except *Brewer*, in which Plaintiffs' motion for leave to amend the complaint has been fully briefed). Briefing on motions to dismiss is complete in all of these cases except in the most recently filed *Packer* lawsuit.

On August 8, 2019, Plaintiffs' counsel filed a thirteenth case, *Gena Strough and James Aldridge, Jr. v. Metropolitan Life Insurance Co., et al.*, 19-CVS-2298. Unlike the earlier cases, the plaintiffs in *Strough* do not allege that they made Ponzi scheme investments, nor do they assert claims under the North Carolina Securities Act, although they assert claims concerning an insurance policy that is also at issue in the first *James Aldridge* lawsuit. On August 28, 2019, in *Strough*, MLIC filed a Motion to Designate Case as Rule 2.1 Exceptional or Complex Business Case.⁵

D. Plaintiffs Have Pursued Piecemeal Discovery Across the Thirteen Cases.

⁴The MetLife Defendants are represented by different counsel in the *Brewer* case.

⁵Because the *Strough* case involves only a subset of the issues in the other cases, MetLife intends to seek a more narrow stay in that case and meanwhile provide substantive responses to interrogatories and produce [*9] responsive documents that concern the specific insurance transactions at issue in that case.

Plaintiffs served written discovery requests in five of the six Related Cases between April and December, 2018. Generally, that discovery consists of separate sets of interrogatories, requests for production of documents and requests for admissions to each of the MetLife Defendants and separate written discovery to individual defendants. Some of the discovery seeks documents and information over a 17-year or longer period of time, and some of the discovery overlaps substantially across the different cases. The MetLife Defendants have served timely objections to the written discovery in accordance with Judge Bledsoe's September 4, 2018 Order Extending Stay.

After Plaintiff Olin served written discovery in the *Olin* case, MetLife's counsel conferred with Plaintiffs' counsel, proposing that the stay of discovery entered in the six Related Cases should also apply in the *Olin* case. Plaintiffs' counsel agreed, and the MetLife Defendants served timely written objections to discovery on May 29, 2019. To avoid any [*10] future confusion or additional motion practice, MetLife submits that *Olin* should now be aligned with the other cases and formally be made subject to a stay order entered by the Court.

Beginning in August 2019, the plaintiffs began serving written discovery in other cases, including one of the first six cases and the majority of the more recent cases. Although the plaintiffs have not yet served discovery in every case, to date the plaintiffs have served on the MetLife Defendants at least 62 separate sets of written discovery requests, including roughly 269 total interrogatories, 173 total requests for production, and 89 requests for admissions, excluding the *Brewer* case.

E. Plaintiffs Have Rejected MetLife's Proposed Stay, Which Would Allow a Coordinated Approach to Discovery.

After Plaintiffs served multiple sets of discovery requests in early August, 2019, counsel for MetLife contacted Plaintiffs' counsel to discuss whether Plaintiffs would agree that a partial stay similar to the stay entered in the Related Cases would govern the Actions. The MetLife Defendants explained their view that discovery should proceed in a coordinated manner across all cases to avoid [*11] unnecessary duplication of efforts and a consistent schedule. Counsel further explained that awaiting rulings on the pending motions to dismiss pursuant to Rule 12(b)(6) would allow the parties to

understand which claims, which parties (plaintiffs and defendants), and which investments will survive motions to dismiss. The proposed stay would, in turn, allow the parties to discuss a more efficient and coordinated discovery plan, including the possibility of consolidating discovery across twelve or thirteen cases to avoid unnecessary duplication of efforts and expense.

Indeed, at the hearing on motions to dismiss in the first seven cases, the Court asked counsel whether the cases should be consolidated for purposes of discovery. Plaintiffs' counsel agreed at that hearing that consolidation was "a good idea." *See* Exhibit A (Hearing Tr. pp. 196-99). Also, in its recent Order Regarding Consolidation of Case Caption for Court Purposes (ECF No. 75), the Court suggested that consolidation and coordination of discovery and other activities among the cases would be an efficient way to proceed: "the Court believes that consolidation-for discovery, motions practice, or otherwise-may be appropriate [*12] at a future date, after the Court has had an opportunity to discuss this topic with counsel and evaluate the best mechanism for such consolidation." ECF No. 75 at P 4.

In recent discussions, however, Plaintiffs have rejected the MetLife Defendants' proposal and have indicated that they wish to proceed with written discovery and depositions regardless of the stay that remains in place in the six Related Cases. Counsel have discussed these issues on multiple occasions in the last two weeks and have been unable to resolve their differences.⁶ The MetLife Defendants have therefore brought this motion for partial stay.

ARGUMENT

Courts have broad inherent power to stay proceedings to promote economy and efficiency for themselves, for counsel, and for the litigants:

the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh

⁶Counsel for the defendants in each case have indicated that they consent to the relief requested in this motion.

competing [*13] interests and maintain an even balance.

Landis v. North American Co., 299 U.S. 248, 254-55 (1936).

By this motion, MetLife seeks to align the approach for discovery and other pretrial activity in the Actions with the six Related Cases. That is, MetLife requests (a) a stay of pretrial procedures, including preparation of case management orders for each case; and (b) a partial stay of discovery, until the Court rules on the pending motions to dismiss pursuant to Rule 12(b)(6). With regard to the requested partial stay of discovery, MetLife requests that the parties in the Actions be authorized to serve written discovery requests and required to serve written objections to the discovery requests, but, consistent with the stays entered in the six Related Cases, the parties should not be required to provide substantive responses or produce responsive documents at this time.

All plaintiffs in the thirteen Siskey-related cases are represented by the same counsel. All but one of the cases (the recently filed *Strough* case ⁷) are pending before this Court and are in roughly the same procedural posture. With the exception of *Strough* (which only alleges claims of insurance policy misconduct), all cases bring virtually identical claims against MetLife, and will involve similar issues and defenses. All cases relate to Siskey's alleged Ponzi scheme, and-again excepting *Strough*-allege damages stemming from investments in an overlapping group of entities. Plaintiffs' discovery requests propounded in *Strough* seek the same or similar information concerning supervisory history, and regarding alleged investigations, that also has been sought in many of the other cases. Similarly, cases other than *Strough* purport to raise insurance-related claims. Should all or parts of these thirteen cases proceed beyond Rule 12(b)(6) motions, they will require overlapping discovery.

MetLife respectfully submits that the Court's rulings on motions to dismiss may entirely eliminate all claims and all cases, or at least significantly [*15] limit certain of the claims and issues in dispute across all thirteen Siskey-

related cases. The partial stay MetLife has requested will allow the parties to work on a manageable approach for discovery with the benefit of the Court's rulings on motions to dismiss on Rule 12(b)(6). Indeed, the parties discussed the possibility of a consolidated approach to discovery at the March 6, 2019 hearing on motions to dismiss. The addition of several new lawsuits has only increased the value of a coordinated approach to discovery.

Prior to receiving rulings on the Rule 12(b)(6) motions, it is impossible for the parties to know which claims, which investments and which parties will be involved in the thirteen related cases. Accordingly, at this time, the parties are not able to address the most efficient approach to discovery, the scope and timing of discovery, deadlines for fact and expert discovery, deadlines for summary judgment motions, and other case management matters. However, upon the Court's ruling on the pending motions to dismiss, the parties will be in a position to address these matters, including the extent to which these matters can be consolidated for discovery or other purposes. [*16]

In addition, without the requested stay of the Actions and a coordinated approach to discovery, allowing discovery to proceed on a piecemeal basis in some of the Siskey-related lawsuits will be highly inefficient and will disproportionately consume the parties' and the Court's time and resources. Thus, granting a stay in the Actions will serve the interest of judicial economy by ensuring that, to the extent these cases proceed, they will do so on a unified schedule and in an organized and efficient fashion. Staying the Actions in the same manner as the six Related Cases, at least through decisions on Rule 12(b)(6) motions to dismiss in the first seven cases, will serve that end.

In the alternative, should the Court deny MetLife's motion for stay, MetLife requests a 60-day extension of time running from the date of the Court's order on this motion in which MetLife may serve substantive responses along with written objections to the discovery. Given the sheer number of discovery requests Plaintiffs have served to date, a substantial extension is warranted.

CONCLUSION

The MetLife Defendants have filed this motion in good faith and not for purposes of unnecessary delay. [*17] These Defendants respectfully request that this Court

⁷As to the recently-filed *Strough* case, the Defendants have filed a motion pursuant to Rule 2.1 and requested that the case be referred to this Court because, among other reasons, it concerns [*14] one of the same insurance policies that is at issue in another Siskey case and because the *Strough* plaintiffs already have propounded discovery that overlaps with discovery sought in the other cases.

enter an Order staying this action in part through and including rulings on Rule 12(b)(6) motions to allow the parties time to plan for an orderly approach to discovery with the benefit of the Court's Order on motions to dismiss.

This the 9th day of September, 2019.

/s/ Charles E. Raynal, IV

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CERTIFICATION

Defendants MLIC and MMLIS, by and through counsel, hereby certify that the foregoing **MEMORANDUM IN SUPPORT [*18] OF THEIR MOTION FOR PARTIAL STAY OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME** contains fewer than 7,500 words, exclusive of the case caption, any index, table of contents, or table of authorities, signature blocks, or any required certificates and therefore complies with the limitations set forth in BCR 7.8.

/s/ Charles E. Raynal, IV

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was electronically filed with the NC Business Court and will be served in accordance with BCR 3.9(a) on counsel of record addressed to the following:

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