

FILED

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CLERK, U.S. DISTRICT COURT
By M. P.
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSEPH BILLITTERI, and SCOTT JESSEN
on Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

vs.

SECURITIES AMERICA, INC., CAPWEST
SECURITIES, INC., AMERIPRISE
FINANCIAL, INC.,

Defendants.

Civil Action No. 3:09-CV-01568-F

KAREN L. BOPP, IRA STERLING TRUST,
CUSTODIAN, BUSSELL LIVING TRUST
DTD 12/05/96, and SHARON KREINDEL
REVOCABLE TRUST DTD 02/09/2005, on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

vs.

CEDAR BROOK FINANCIAL PARTNERS,
LLC, NEXT FINANCIAL GROUP, INC.,
QA3 FINANCIAL CORP., and SECURITIES
AMERICA, INC.,

Defendants.

Civil Action No. 3:09-CV-01646-F

CASE MANAGEMENT ORDER

1. The Court, having considered the motion by Joseph Billitteri, Scott Jessen, Karen L. Bopp, IRA Sterling Trust, Custodian, Bussell Living Trust DTD 12/05/96, and Sharon

Kreindel Revocable Trust DTD 02/09/2005 to consolidate these actions, appoint Interim Co-Lead Plaintiffs' Counsel and Liaison Plaintiffs' Counsel, and set a schedule for the filing of a consolidated amended complaint (the "Complaint") and any responses thereto, and, for good cause shown, hereby enters the following Case Management Order:

2. The following actions are consolidated, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, for all pretrial purposes (the "Consolidated Action"):

| <u>Case Name</u> | <u>Case No.</u> |
|--|-----------------|
| <i>Joseph Billitteri, et al. v. Securities America, Inc., et al.</i> | 3:09-cv-01568-F |
| <i>Karen L. Bopp, IRA Sterling Trust, Custodian, et al. v. Cedar Brook Financial Partners, et al. (the "Bopp Action")</i> ¹ | 3:09-cv-01646-F |

3. A Master Docket and a Master File are hereby established for the Consolidated Action.

4. The Consolidated Action shall be identified as *Billitteri v. Securities America, Inc. et al. (Provident Royalties Litigation)*, Civil Case No. 3:09-cv-01568-F, and the files of these former individual actions shall be maintained in one file under Master File No. 3:09-cv-01568-F. Any other putative class actions now pending or later filed in or transferred into this District that arise out of the same facts, conduct, transactions, or occurrences alleged in the Consolidated Action shall be deemed a Related Action and shall be consolidated with the Consolidated Action for all pretrial purposes, if and when they are brought to the Court's attention. Any other individual actions now pending or later filed in or transferred into this District that arise out of the same facts, conduct, transactions, or occurrences alleged in the Consolidated Action shall be deemed a Related Action and shall be coordinated with the

¹ Plaintiffs have agreed to dismiss Defendant Cedar Brook Financial Partners, LLC ("Cedar Brook") from the *Bopp* Action without prejudice, subject to the entry of a Tolling Agreement with Cedar Brook and Securities America, Inc., and Cedar Brook will not be named as a defendant in the Complaint.

Consolidated Action for all pretrial purposes, if and when they are brought to the Court's attention (together with the Consolidated Action, "Consolidated and/or Coordinated Actions").

5. Every pleading filed in the Consolidated and/or Coordinated Actions, shall bear the following caption:

| | | |
|---|---|-------------------|
| _____ | : | |
| BILLITTERI v. SECURITIES AMERICA, INC. et | : | |
| al. (Provident Royalties Litigation) | : | 3:09-cv-01568-F |
| | : | AND RELATED CASES |
| _____ | : | |
| THIS DOCUMENT RELATES TO: | : | |
| _____ | : | |

6. When a pleading is intended to be applicable to all actions governed by this Order, the words "All Actions" shall appear immediately after the words "This Document Relates to:" in the caption set out above. All pleadings that are applicable to "All Actions" shall be filed in the Master File and noted on the Master Docket. No further papers need be filed or docket entries made.

7. When a pleading is intended to be applicable only to some, but not all, of the Consolidated and/or Coordinated Actions, the Court's docket number for each individual action to which the pleading is intended to be applicable and the last name of the first-named plaintiff in the action shall appear immediately after the words "This Document Relates to:" in the caption described above.

8. When a document is filed and the caption shows that it is to be applicable to fewer than all of the Consolidated and/or Coordinated Actions, the clerk shall file the document in the Master File, and shall note the filing in both the Master Docket and the docket of each applicable action.

9. When a new Related Action is filed in this Court or transferred to this Court from another court, the clerk of this Court shall:

- a. Place a copy of this Order in the separate file for the new Related Action, after notification to Interim Co-Lead Plaintiffs' Counsel, who shall mail to the attorneys for the plaintiffs in the new Related Action a copy of this Order and direct that this Order be served upon or mailed to any new defendants in the new Related Action; and
- b. Make an appropriate entry on the Master Docket. This Court requests the assistance of counsel in calling the attention of the clerk of this Court to the filing or transfer of any case which may properly be consolidated or coordinated as part of *Billitteri v. Securities America, Inc. et al. (Provident Royalties Litigation)*.

10. Plaintiffs, Defendants, and/or any party to any new Related Action may object to the consolidation or coordination of the new Related Action with the Consolidated and/or Coordinated Actions. Any such objection must be filed within 20 days of the entry of the order referred to in ¶ 9(b), *supra*.

11. The Court hereby appoints Girard Gibbs LLP and Zwerling, Schachter & Zwerling, LLP as Interim Co-Lead Plaintiffs' Counsel and McKool Smith P.C. as Liaison Plaintiffs' Counsel pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure.

12. Interim Co-Lead Plaintiffs' Counsel shall have the following responsibilities and duties, to be carried out either personally or through counsel whom Interim Co-Lead Plaintiffs' Counsel shall designate:

- a. To coordinate and direct the plaintiffs' briefing and argument of any and all

motions;

- b. To coordinate and direct the plaintiffs' conduct of any and all discovery proceedings;
- c. To coordinate and direct the plaintiffs' examination of any and all witnesses in depositions;
- d. To coordinate and direct the selection of plaintiffs' counsel to act as a spokesperson at all pre-trial conferences;
- e. To call meetings of plaintiffs' counsel as they deem necessary and appropriate from time to time;
- f. To coordinate and direct on behalf of plaintiffs all settlement negotiations with counsel for Defendants;
- g. To coordinate and direct the plaintiffs' preparation for trial and the plaintiffs' trial of this matter and to delegate work responsibilities to selected counsel as may be required on behalf of plaintiffs;
- h. To coordinate and direct the plaintiffs' preparation and filings of all pleadings;
and
- i. To coordinate and direct any other matters concerning the prosecution or resolution of this action on behalf of the plaintiffs.

13. No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any plaintiff without the approval of Interim Co-Lead Plaintiffs' Counsel, so as to prevent duplicative pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted on behalf of the plaintiffs without the approval of Interim Co-Lead Plaintiffs' Counsel.

14. Interim Co-Lead Plaintiffs' Counsel shall be the contact between plaintiffs' counsel and Defendants' counsel, as well as the spokesperson for plaintiffs' counsel.

15. Defendants shall effect service of papers on plaintiffs by serving a copy of same on Interim Co-Lead Plaintiffs' Counsel by ECF filing, overnight delivery service, electronic delivery, telecopy, or hand delivery. Plaintiffs shall effect service of papers on Defendants by serving a copy of same on each Defendant's counsel by ECF filing, overnight delivery service, electronic delivery, telecopy or hand delivery.

16. Plaintiffs in the Consolidated Action shall file the Complaint no later than 30 days from the date of this Order. Defendants agree to accept service of the Complaint. Defendants shall have 30 days from the date of the filing of the Complaint to respond to the Complaint. Should Defendants file a motion or motions to dismiss, Plaintiffs in the Consolidated Action shall have 30 days from the date of that motion or motions to respond. Defendants shall have 30 days from the date of the response to file a reply brief in further support of their motion or motions. Based on the consolidation of the two actions identified in paragraph 1, *supra*, and the filing of a Complaint, the Court permits Defendants to file briefs of no more than ~~40~~³⁰ pages in support of a motion to dismiss, permits Plaintiffs in the Consolidated Action to file responses briefs of no greater than ~~40~~³⁰ pages in response to any motion to dismiss, and permits Defendants to file briefs of no greater than ~~20~~¹⁵ pages in reply to any such response.

17. Plaintiffs in the Consolidated Action shall file a motion in support of class certification within 90 days after Defendants filing of an answer to the Complaint.

18. The filing of this joint application did not, does not, and shall not waive: (1) any and all defenses that Defendants may possess to any and all of plaintiffs' claims arising out of the allegations and conduct that form the basis for the Consolidated Action, including, without

limitation, any and all defenses based on lack of personal jurisdiction or improper venue; (2) any objection to any motion by plaintiffs for class certification; (3) Defendants' right to seek a severance of parties or issues following the Court's decision on any motion for class certification; (4) Defendants' right to move to transfer venue of any such action, and this Order is entered without prejudice to any such rights; and (5) Defendants' right to seek to compel any and all claims to arbitration.

Dated: 11/05/2009.


United States District Court Judge