

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

Heritage Equity Group 401(k) Savings Plan,)
et al.,)
)
 Plaintiffs,)
)
v.)
)
Mid Atlantic Capital Corporation and)
SunGard Institutional Brokerage, Inc.,)
)
 Defendants.)

**No. 3:07-cv-841
Judge Trauger
Magistrate Judge Bryant**

John C. McLemore, Trustee,)
)
 Plaintiff,)
)
v.)
)
)
Regions Bank, as Successor in Interest by)
Merger to AmSouth Bank, and)
Mid Atlantic Capital Corporation,)
)
 Defendants.)

**No. 3:08-cv-21
Judge Trauger
Magistrate Judge Bryant**

**REPLY MEMORANDUM IN SUPPORT OF MACC’S
MOTION TO CONSOLIDATE**

Mid Atlantic Capital Corporation (“MACC”) has moved the Court to consolidate these related actions pursuant to Federal Rule of Civil Procedure 42(a) (No. 3:07-cv-841 Doc. 62-63; No. 3:08-cv-21 Doc. 8-9). The responses to MACC’s motion do not oppose consolidation for discovery and scheduling purposes, but some responses do oppose consolidation for trial, should trial be necessary (see No. 3:07-cv-841 Doc. 64, 66, 68; No. 3:08-cv-21 Doc. 10, 11). MACC maintains that these cases cannot be maintained separately for any purpose, as each purports to

bring against MACC a number of identical claims on behalf of a number of identical parties based on identical underlying allegations. Nonetheless, later developments, including rulings on outstanding motions to dismiss both complaints, may render moot, or otherwise resolve, the objections to consolidation for trial. MACC therefore respectfully suggests that the Court consolidate the cases for discovery and scheduling purposes, but defer deciding how the cases are to be tried, if trial proves necessary. MACC further requests that the consolidated cases be set for a case management conference so that the parties and the case manager may establish a scheduling order applicable to the consolidated cases and address other case management issues.¹

Respectfully submitted,

KIRKPATRICK & LOCKHART PRESTON GATES
ELLIS LLP

David L. McClenahan
Matthew J. Fader
Ryan DeMotte
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
(412) 355-6500

and

¹ This Court withdrew the reference in the Trustee's Case on February 11, 2008 (No. 3:08-cv-21 Doc. 7). To date, the initial case management conference for the Trustee's Case has not been set.

HARWELL HOWARD HYNE
GABBERT & MANNER, P.C.

By: s/ D. Alexander Fardon
Craig V. Gabbert, Jr.
(Tenn. Bar No. 4702)
Barbara D. Holmes
(Tenn. Bar No. 12121)
D. Alexander Fardon
(Tenn. Bar No. 13787)
315 Deaderick Street, Suite 1800
Nashville, TN 37238
615-256-0500-Telephone
615-251-1058-Facsimile
cvg, bdh or daf@h3gm.com

Attorneys for Mid Atlantic Capital Corporation

CERTIFICATE OF SERVICE

On March 7, 2008, this document was filed electronically with the Clerk's office by using the CM/ECF system and was simultaneously served upon the following using that same system:

In Case No. 3:08-cv-21:

John R. Wingo
Jonathan Frederick Teitenberg
Frost, Brown & Todd, LLC
424 Church Street
Suite 1600
Nashville, TN 37219

Robert Martin Garfinkle
Garfinkle, McLemore & Walker, PLLC
P.O. Box 158249
2000 Richard Jones Road
Suite 250
Nashville, TN 37215-8249

In Case No. 3:07-cv-841:

H. Naill Falls Jr.
John V. Veach III
Falls & Veach
1143 Sewanee Road
Nashville, TN 37220

Deborah S. Davidson
Morgan, Lewis & Brockius LLP
77 West Wacker Drive, 5th Floor
Chicago, IL 60601

Lawrence Slade Eastwood, Jr.
Baker, Donelson, Bearman, Caldwell
& Berkowitz
211 Commerce Street, Suite 1000
Nashville, TN 37201

Robert Martin Garfinkle
Garfinkle, McLemore & Walker, PLLC
P.O. Box 158249
2000 Richard Jones Road
Suite 250
Nashville, TN 37215-8249

s/ D. Alexander Fardon
D. Alexander Fardon