

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

<b>John C. McLemore, Trustee,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>No. 3:08-cv-21</b>
	)	<b>Judge Trauger</b>
	)	
<b>Regions Bank, as Successor in Interest by</b>	)	
<b>Merger to AmSouth Bank, and</b>	)	
<b>Mid Atlantic Capital Corporation,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM IN SUPPORT OF MACC’S  
MOTION TO RE-ASSIGN THIS CASE AS A RELATED CASE**

Defendant Mid Atlantic Capital Corporation (“MACC”) has moved pursuant to Administrative Order No. 176 for the re-assignment of this case as a related case. This case is related to the prior-pending case of Heritage Equity Group 401(k) Savings Plan and others v. Mid Atlantic Capital Corporation and SunGard Institutional Brokerage, Inc., M.D. Tenn. No. 3:07-cv-841 (J. Wiseman / M.J. Bryant) (the “Heritage Case”). The Heritage Case and this case arise out of the same alleged events and involve common parties and questions of both law and fact, such that allowing the cases to proceed separately before different judges would result in substantial duplication of effort and expense and could result in one or more parties being subject to conflicting outcomes.

**The Heritage Case**

Ten 401(k) plans and their trustees filed the Heritage Case on August 16, 2007. The amended complaint in the Heritage Case is part of the record in this case (*see* Doc. 1 at Ex. 1). The Heritage Case plaintiffs seek to recover from defendants MACC and SunGard Institutional

Brokerage, Inc. (“SunGard”) plan assets that the plaintiffs allege were stolen from them by the fiduciary to whom they had entrusted those assets, Barry Stokes and Stokes’s company, 1Point Solutions LLC (collectively, “Stokes”) (*id.*). MACC is a clearing brokerage firm at which Stokes opened and maintained an account (*id.*). The Heritage Case plaintiffs claim MACC and SunGard are liable for Stokes’s theft of plan assets under both ERISA and state law (*id.*).

### **This Case**

John C. McLemore (the “Trustee”) is the Chapter 11 Trustee for the consolidated bankruptcy estates of Barry Stokes and 1Point Solutions LLC. On August 20, 2007, the Trustee filed an adversary proceeding against MACC and Regions Bank (*see* Doc. 1 Ex. 2). The Trustee’s complaint concerns the same alleged events at issue in the Heritage Case (*id.*). Like the plaintiffs in the Heritage Case, the Trustee seeks to hold MACC liable for Stokes’s theft of the 401(k) plans’ assets under both ERISA and state law (*id.*). The Trustee’s complaint seeks recovery not for the bankruptcy estate but for the 401(k) plans themselves, including the same ten plans that are already plaintiffs in the Heritage Case (*see, e.g., id.* at ¶¶ 101, 108, 115, 124, 134, 137, 140).<sup>1</sup>

### **Bases for Re-Assignment of this Case**

Administrative Order No. 176 contains a non-exclusive list of factors for determining when cases are “Related Cases” (*see* A.O. 176 at § 1(c)). Every one of those listed factors exists here. This case and the prior-pending Heritage Case concern the same alleged events and involve common claims asserted by or on behalf of common parties; in addition, MACC is named a defendant in both cases. For these reasons, MACC respectfully requests the re-

---

<sup>1</sup> MACC’s motion to withdraw the reference as to the Trustee’s claims in this non-core proceeding is pending (*see* Doc. 1).

assignment of this case pursuant to Administrative Order No. 176 to the judge presiding over the prior-pending Heritage Case.<sup>2</sup>

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

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

---

<sup>2</sup> If and when an order is entered granting MACC's motion to withdraw the reference, MACC intends to move pursuant to Federal Rule of Civil Procedure 42 for the consolidation of this case and the Heritage Case.

CERTIFICATE OF SERVICE

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:

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 addition, on the day of filing a copy of this document was served by first-class mail upon the following counsel of record in M.D. Tenn. 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, 5<sup>th</sup> Floor  
Chicago, IL 60601

s/ D. Alexander Fardon  
D. Alexander Fardon