

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARL CARVER, et al,	:	
	Plaintiffs,	:
-v-	:	
	:	
THE BANK OF NEW YORK MELLON, et al,	:	
	Defendants.	:
-----	X	15-CV-10180 (JPO)
-----	X	16-CV-228 (JPO)
ROBERT E. HARTLINE, et al,	:	
	Plaintiffs,	:
-v-	:	
	:	
THE BANK OF NEW YORK MELLON, et al,	:	
	Defendants.	:
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ORDER

J. PAUL OETKEN, District Judge:

This order concerns two separately filed actions. In this first case, commenced on December 31, 2015, Plaintiffs Carl Carver, Edward C. Day, L.D. Fletcher, Deborah Jean Kenny, and Lisa Parker (the “Carver Plaintiffs”) bring a civil enforcement action pursuant to ERISA, 29 U.S.C. § 1132(a)(2) and (a)(3) against the Bank of New York Mellon and BNY Mellon, National Association (together, “New York Mellon”), on behalf of four ERISA employment benefit plans in which the Carver Plaintiffs are participants. (15-CV-10180, Dkt. No. 1 ¶ 1.) The Carver Plaintiffs also seek to represent a class of participants, beneficiaries, and named fiduciaries of similarly-situated employee benefit plans. (*Id.*) In the second case, commenced on January 12, 2016, Plaintiff Robert Hartline brings a civil action under ERISA against New York Mellon on behalf of his own ERISA plan, as well as a class of those in similarly situated plans. (16-CV-228, Dkt. No. 1 ¶¶ 1-2.)

Before the Court are motions to consolidate these cases, appoint a lead ERISA plaintiff, and appoint interim lead ERISA counsel. For the reasons that follow, the motion to consolidate the above-captioned cases is granted. The motion to appoint the Carver Plaintiffs as lead plaintiffs is granted and the motion to appoint plaintiff Hartline is denied. The motion to appoint McTigue Law LLP and Ciresi Conlin LLP as interim lead counsel is granted. The competing motion to appoint Keller Rohrback is denied. Familiarity with the facts and procedural history of this case is otherwise presumed.

I.

First, the Court considers whether the cases should be consolidated. Under Rule 42 of the Federal Rules of Civil Procedure, courts may consolidate cases “involv[ing] a common question of law or fact.” Fed. R. Civ. P. 42(a); see *In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 435 (S.D.N.Y. 2008). “The trial court has broad discretion to determine whether consolidation is appropriate.” *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir. 1990).

All parties agree that the two actions, both of which raise claims under ERISA and allege substantially similar questions of law and fact, should be consolidated for all purposes under Rule 42(a). Because considerations of judicial economy favor consolidation, the motion to consolidate the above-captioned cases is granted. The Court will consider any future motions to consolidate this action with others on a case-by-case basis.

II.

Both Hartline and the Carver Plaintiffs have filed competing motions to be appointed lead ERISA plaintiffs and thereby represent the interests of all participants and beneficiaries of the plans in the proposed class. The Carver Plaintiffs are best situated to represent the class and are hereby designated as lead plaintiffs. The Carver Plaintiffs have substantial familiarity with

the issues and facts relevant to this case, represent participants in both defined benefit and defined contribution plans, and represent a broader cross-section of participants in the proposed class. The motion to appoint the Carver Plaintiffs as lead plaintiffs is granted and the motion to appoint plaintiff Hartline is denied.

III.

Rule 23(g)(3) of the Federal Rules of Civil Procedure provides that a court “may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” In doing so, a court must consider the following factors:

- (i) the work counsel has done in identifying or investigating claims in th[e] action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law;
- (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

Based on a review of the parties’ briefs and submissions, the Court concludes that the appointment of McTigue Law and Ciresi Conlin as interim lead ERISA counsel would best serve the interests of plaintiffs. Each of the statutory factors supports this appointment. McTigue Law and Ciresi Conlin have undertaken work to identify and investigate the claims at issue here. The firms have experience in litigating the type of claims asserted in this action. Finally, the firms have the resources to represent the proposed class. Accordingly, the motion to appoint McTigue Law and Ciresi Conlin as interim lead ERISA counsel is granted and the competing motion to appoint Keller Rohrback is denied.

IV.

In review, the motion to consolidate the above-captioned cases is GRANTED. The motion to appoint the Carver Plaintiffs as lead plaintiffs is GRANTED and the motion to appoint plaintiff Hartline is DENIED. The motion to appoint McTigue Law LLP and Ciresi Conlin LLP as interim lead counsel is GRANTED. The competing motion to appoint Keller Rohrback is DENIED. The motion for oral argument is DENIED as moot.

Any amended or consolidated complaint in this matter shall be filed within 3 weeks of this Order. The Clerk of Court is directed to close the motions in 15-CV-10180 at docket numbers 11, 32, and 51. The Clerk of Court is also directed close the motions in 16-CV-228 at docket numbers 7, 20, and 31.

SO ORDERED.

Dated: April 12, 2016
New York, New York



J. PAUL OETKEN
United States District Judge