



2. On October 13, 2000 the Receiver initiated these proceedings against Cupini and Cadet. The Receiver's Complaint against Cupini and Cadet in this case alleges the exact same causes of action the Receiver asserts in the *Adam Shaw* case. For ease of reference, a true and correct copy of the Complaint in the *Adam Shaw* case is attached hereto as Exhibit "A," and a true and correct copy of the Complaint in this case is attached hereto as Exhibit "B." Had the Receiver known of the role of Cupini and Cadet as brokers/agents at the time of the filing of the *Adam Shaw* case, he would have named and included them in the *Adam Shaw* case.

3. In order to avoid unnecessary expenditure of judicial resources and receivership assets, the Receiver submits that this case should be consolidated with the *Adam Shaw* case.

## **II. ARGUMENT AND AUTHORITIES**

4. A federal district court may consolidate separate actions when the actions involve common questions of law and fact. Fed R. Civ. P. 42 (a); *Enterprise Bank v. Saettele*, 21 F. 3d 233, 235 (8th Cir. 1994). Courts have identified several factors to consider in ruling on a motion to consolidate, and all of those factors militate in favor of consolidation in the instant case with the *Adam Shaw* case:

- a. Whether the suits proposed for consolidation are pending before the same court. *Investors Research Co. v. U. S. Dist. Court*, 877 F.2d 777, 777 (9th Cir. 1989). The instant case and the *Adam Shaw* case are pending before this Court.
- b. Whether the suits proposed for consolidation involve a common party. *Seguro de Servicio de Salud v. McAuto Sys. Group, Inc.*, 878 F.2d 5, 8 (1st Cir. 1989). The instant case and the *Adam Shaw* case are both brought by

Michael J. Quilling, in his capacity as Receiver.

- c. Whether the suits proposed for consolidation involve common issues of law. *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1496 (11th Cir. 1985). The instant case and the *Adam Shaw* case involve identical issues of law, as demonstrated by the identical causes of action asserted in the Complaint for each case.
- d. Whether the suits proposed for consolidated involve common questions of fact. *Hendrix*, 776 F.2d at 1496. The instant case and the *Adam Shaw* case involve many common issues of fact, as demonstrated by the similar allegations set forth in the Complaint for each case. Specifically, both cases involve the fraudulent “investment” scheme of Hammersmith Trust, LLC and Microfund, LLC in the role of certain individual and entities who acted as brokers/agents for the location and solicitation of investors in those programs.
- e. Whether the proposed consolidation would create any risk of prejudice or possible confusion. *Hendrix*, 776 F.2d at 1495. The *Adam Shaw* suit already involves several different defendants, so joining Cupini and Cadet as additional defendants should not case any risk of prejudice or possible confusion. The case against all defendants in both cases is relatively simple and straightforward, and a jury should not have any trouble distinguishing between the conduct and liability of the different defendants.

- f. Whether the proposed consolidation would result in an unfair advantage. *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993). For the reasons set forth in the subparagraphs above, the Receiver respectfully submits that consolidation of the instant case with the *Adam Shaw* case would not result in any unfair advantage to any party.
- g. Whether consolidation will conserve judicial resources. Consolidation of the instant case with the *Adam Shaw* case will obviously conserve judicial resources, because only one trial will be necessary and the cases involve identical issues of law and a substantial overlap of relevant facts.
- h. Whether consolidation will reduce the time for resolving the actions when compared to separate trials. *Hendrix*, 776 F.2d at 1497. Consolidation of the instant with the *Adam Shaw* case will reduce the time for the Receiver to resolve both actions separately, by avoiding the duplicative discovery, pretrial matters, and trials.
- i. Whether consolidation will reduce the expense of trying the actions separately. *Cantrell*, 999 F.2d at 1011. As set forth in the preceding factor, consolidation of the instant case with the *Adam Shaw* case will reduce the expense of trying the actions separately by avoiding fees and expenses for duplicative services in the separate cases.

### **III. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that upon final hearing and consideration of this matter that the Court order consolidation of this case into the *Adam Shaw*

case, Civil Action No. 3:00-CV-1405-M, and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,


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By: 

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ATTORNEYS FOR RECEIVER

**CERTIFICATE OF CONFERENCE**

I hereby certify that I attempted to contact J. Robert Forshey, counsel of record for the Defendants, several times during the week of January 8, 2001. Despite diligent efforts, I was not able to reach him to discuss the relief requested in this Motion. Therefore, this Motion is submitted to the Court for determination.

  
Kenneth A. Hill

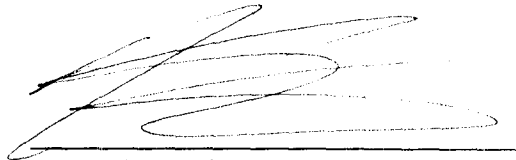
**CERTIFICATE OF SERVICE**

A true and correct copy of this document was served on the 16th day of January, 2001, via first class mail, on the following:

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