

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: CHOCOLATE : **MDL DOCKET NO. 1935**
CONFECTIONARY ANTITRUST : **(Civil Action No. 1:08-MDL-1935)**
LITIGATION :
_____ : **(Judge Conner)**
:
THIS DOCUMENT APPLIES TO: :
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ALL CASES :

CASE MANAGEMENT ORDER NO. 6B

AND NOW, this 19th day of December, 2008, upon consideration of the motion to amend (Doc. 531) Case Management Order No. 5 (Doc. 387) to reflect a change in the firm affiliation of Michael D. Hausfeld (hereinafter “Attorney Hausfeld”), interim co-lead counsel for the direct purchaser plaintiffs, and it appearing that Attorney Hausfeld was affiliated with Cohen, Milstein, Hausfeld & Toll, P.L.L.C. at the time the court issued Case Management Order No. 5, and that Attorney Hausfeld is currently affiliated with Hausfeld LLP, and, for the reasons set forth in the attached explanatory addendum, it is hereby ORDERED that:

1. The motion to amend (Doc. 531) is CONSTRUED as a motion to substitute Hausfeld LLP for Cohen, Milstein, Hausfeld & Toll, P.L.L.C. as co-lead counsel for the direct purchaser plaintiffs and is GRANTED as so construed.
2. The law firm of Cohen Milstein Sellers & Toll PLLC¹ is APPOINTED to the executive committee for the direct purchaser plaintiffs.

¹Cohen Milstein Sellers & Toll PLLC, the successor of Cohen Milstein Hausfeld & Toll, P.L.L.C., was formed on November 12, 2008 following Attorney Hausfeld’s departure from the firm. (Doc. 536-2 ¶¶ 2-3.)

3. Case Management Order No. 5 (Doc. 387) is AMENDED as follows:
- a. The following subparagraph is deleted from Paragraph 1.a.ii:

Michael D. Hausfeld
COHEN MILSTEIN HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005
(202) 408-4600.

The above subparagraph is replaced with the following language:

Michael D. Hausfeld
HAUSFELD, LLP
1146 19th Street, N.W.
Washington, DC 20036
(202) 576-1089.

- b. The following subparagraph is added to Paragraph 1.a.iv:

COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue, N.W.
Washington, DC 20005
(202) 408-4600

4. Nothing contained herein prevents Cohen Milstein Sellers & Toll, PLLC from participating in the above-captioned action in a manner consistent with the provisions of Case Management Order No. 5 (Doc. 387).

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

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**EXPLANATORY ADDENDUM TO
CASE MANAGEMENT ORDER NO. 6B**

Michael D. Hausfeld, Esquire (“Attorney Hausfeld”), whom the court appointed as co-lead counsel for the direct purchaser plaintiffs, ended his affiliation with Cohen, Milstein, Hausfeld & Toll, PLLC (“CMHT”) on November 6, 2008. He thereafter formed Hausfeld, LLP. Several CMHT attorneys assigned to the above-captioned matter, including Robert G. Eisler (“Attorney Eisler”) and Hilary Ratway, likewise transferred their firm association. (Doc. 550-3 ¶¶ 8-12.) However, at least two associates, Christopher Cormier (“Attorney Cormier”) and Seth Gassman (“Attorney Gassman”), have contributed significant time to this matter and remain affiliated with CMHT’s successor entity, Cohen Milstein Sellers & Toll PLLC (“CMST”). (Doc. 536-3 ¶¶ 3, 5-6; Doc. 536-4 ¶¶ 3, 5-6.)

Both Hausfeld LLP and CMST request to serve as interim co-lead counsel for the direct purchasers. The court has reviewed the filings, declarations, and firm résumés submitted by the parties and possesses sufficient information to address this matter without further submissions.

The departure of a significant number of attorneys from a firm to found a new practice often presents complex challenges, including conflicts of interest, sudden personnel voids at the legacy firm, and the necessity of decisive management within the startup organization. These issues become exponentially more complicated when, as here, the attorneys are participating in multidistrict litigation borne of approximately ninety original actions. Maintaining continuity in leadership pending class certification frequently serves the interests of prospective class members by bringing stability to the relationships among counsel.

The court will therefore re-appoint Attorney Hausfeld and his new firm, Hausfeld LLP, as co-lead counsel for the direct purchaser plaintiffs. Hausfeld LLP possesses the resources and expertise necessary to provide able representation, and the legal community has consistently recognized Attorney Hausfeld as a capable practitioner in the field of antitrust. This continuity of leadership also honors the consensus reached by all counsel for the direct purchaser plaintiffs in July 2008, when they recommended that Attorney Hausfeld and H. Laddie Montague, of Berger & Montague, P.C., serve as interim co-lead counsel. (Doc. 374 at 3.)¹

CMST, however, has devoted significant resources to this matter, not the least of which are the nearly 500 hours that Attorneys Gassman and Cormier have expended representing the direct purchaser plaintiffs. Both of these attorneys—as

¹Maintaining Attorney Hausfeld's leadership is likewise consistent with CMHT's pre-appointment filings, in which the firm sought a position of leadership based largely upon the expertise of Attorneys Hausfeld and Eisler. (See Doc. 275 at 20-21.)

well other members of CMST's antitrust practice group—possess significant knowledge of the legal and factual issues presented by the pending action. The direct purchaser plaintiffs would be ill-served if they lost the benefit of this experience solely by virtue of Attorney Hausfeld's departure from CMST.

Therefore, the court will appoint CMST to the executive committee for the direct purchaser plaintiffs, a position from which it will continue to provide leadership and direction as this matter progresses.

Dated: December 19, 2008