

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JAMES J. MORROW, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 96 CH 11208
)	
THEODORE H. ROBERTS, et al.,)	Judge Aaron J. Jaffe
)	
Defendants.)	

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION OF
CLAIMS AGAINST DEFENDANT SALOMON BROTHERS, INC.**

Plaintiffs James J. Morrow, Patricia Morrow, and Morris Weiser (collectively "plaintiffs"), respectfully move this Court pursuant to sections 2-801 and 2-802 of the Illinois Code of Civil Procedure (735 ILCS 5/2-801, 5/2-802) for an order certifying that their claims against defendant Salomon Brothers, Inc. ("Salomon"), contained in Counts V and VI of the Amended Class Action Complaint, may be maintained as a class action. The class on whose behalf these counts are sought to be maintained is described as follows:

All persons, other than named defendants, who owned shares of stock in the Talman Home Federal Savings and Loan Association of Illinois ("Talman") as of September 6, 1991 and whose shares of Talman stock were subject to being purchased for \$10.00 per share by a subsidiary of ABN AMRO, North America, Inc. ("ABN"), pursuant to the terms of the merger between Talman and ABN.

In support of their motion, plaintiffs state as follows:

**A. The Court has already Certified the Class for
the Claims Against the LaSalle Defendants**

1. All defendants other than Salomon (hereafter the "LaSalle defendants") have already conceded that plaintiffs' claims may be maintained as a class action. Consistent therewith, this Court has certified the class as to the claims against those defendants. (See

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Stipulation for Certification of Class, attached as Exhibit A ("Stipulation"); February 9, 1998 Agreed Order, attached as Exhibit B).

2. Specifically, the Court's class certification order recites that (a) the class of plaintiffs is so numerous that joinder of all members is impracticable; (b) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual class members; (c) plaintiff Morris Weiser ("Weiser"), as a representative party, will fairly and adequately protect the interests of the class; and (d) a class action is an appropriate method for the fair and efficient adjudication of the controversy. (See Stipulation; February 9, 1998 Agreed Order).

**B. The Claims Against Salomon are Substantially Similar to the Claims
Against the LaSalle Defendants and
Arise From the Same Nucleus of Operative Fact**

3. The claims against Salomon are indistinguishable from the claims against the LaSalle defendants for class certification purposes. In this regard, plaintiffs allege that they are former shareholders of Talman. In the early 1990s, due to a legislatively mandated change in accounting rules, Talman's capital requirements were massively increased. This action was taken by federal regulatory authorities despite the fact that the federal government had previously agreed to lower capital requirements for Talman, and despite the fact that the bank's earnings remained strong.

4. As a consequence of the change in accounting rules mandated by Congress, Talman was forced to either sell its business to a larger bank or be placed in receivership by the federal Office of Thrift Supervision. Further, given the distressed circumstances generated by this government pressure, the sale price for Talman shares was greatly depressed.

5. The Talman officers (who are included among the LaSalle defendants) proceeded to

negotiate a merger with ABN whereby ABN would buy all of Talman's outstanding shares-- which had a book value of \$40/share--for the fire sale price of \$10/share. A new ABN subsidiary--La Salle-Talman--became the successor bank, and the Talman officers received comparable jobs and comparable (if not increased) compensation with the new bank. The only parties injured in the process were the Talman shareholders, who were forced to sell their stock at an artificially deflated price.

6. Nowhere in the merger materials, including the proxy statement, did the Talman officers ever suggest that there might be a claim against the federal government for changing Talman's agreed upon capital requirements. Nor did Salomon--who had been retained to prepare an opinion as to the fairness of the merger--ever mention such a claim in its fairness opinion. Solomon's fairness opinion was included in the aforementioned proxy statement, which had been sent to all Talman shareholders prior to the merger vote.

7. Only months after completing the merger, the LaSalle defendants filed a breach of contract claim against the federal government for changing Talman's capital requirements. The action, brought by the new bank LaSalle-Talman, seeks hundreds of millions of dollars in damages. According to the LaSalle defendants, LaSalle-Talman acquired all of Talman's claims by blanket assignment, which just happen to include the undisclosed, multi-million dollar claim against the federal government.

8. The federal government's breach of contract forced the merger, enabled ABN to get a bargain price for Talman's shares, and thereby injured the Talman shareholders. Nevertheless, the LaSalle defendants insist that LaSalle-Talman gets to keep the shareholders' damages, because Talman, wittingly or unwittingly, gave the claim away to the LaSalle defendants, and

Salomon certified that the entire transaction was "fair."

9. Plaintiff's class claims against both the LaSalle defendants and Salomon sound in negligence or breach of fiduciary duty arising from the same nucleus of operative fact. Among other things, the failure to disclose the claim against the federal government to the Talman shareholders; the failure to obtain any consideration for the claim; the failure to preserve the claim for the Talman shareholders as the parties injured by the federal government's conduct; the fact that the beneficiary of the federal government's conduct--LaSalle Talman--is now in a position to make a windfall recovery of the damages inflicted on the Talman shareholders, all of these substantive allegations are equally applicable to Salomon and the LaSalle defendants. Thus, certification of the class as to the LaSalle defendants necessarily means that the same class should be certified as to Salomon.

10. As discussed below, this conclusion is confirmed by an analysis of the Illinois class action rule, and the applicable Illinois case law.

C. The Claims Against Salomon are Properly Subject to Class Action Treatment

i. Numerosity

11. First, the class that Weiser seeks to represent against Salomon is so numerous that joinder of all members is impracticable. Courts should certify class actions when requiring multiple separate claims would be expensive and an imposition on the litigants and the courts. Society of St. Francis v. Dulman, 98 Ill. App. 3d 16, 18, 424 N.E.2d 59, 61 (1st Dist. 1981). Here there are over 4,000 persons in the class of former Talman shareholders whose shares were subject to being purchased for \$10.00 per share pursuant to the merger between Talman and

ABN. (See September 16, 1991 Talman Proxy Statement ("Proxy Statement") at 1).¹ Classes far smaller than this have been held sufficiently numerous to be certified. See, e.g., Carrao v. Health Care Service Corp., 118 Ill. App. 3d 417, 427, 454 N.E.2d 781, 789 (1st Dist. 1983) (finding the allegation of over 1,000 members to provide "an ample basis" for a finding of numerosity); Tedesco v. Mishkin, 689 F. Supp. 1327, 1333 (S.D.N.Y. 1988) (finding a proposed class of over 200 members to "amply satisfy" the numerosity requirement);² Gold v. DCL Inc., 399 F. Supp. 1123, 1129 (S.D.N.Y. 1973) (finding that a proposed class of about 3,200 former shareholders met the numerosity requirement). The fact that Talman stock was nationally traded on the NASDAQ exchange before the merger with ABN (see Proxy Statement at 4) provides another justification for finding joinder of all class members impracticable. See McEwen v. Digitran Systems, Inc., 160 F.R.D. 631, 637 (D. Utah 1994) (finding the numerosity requirement fulfilled in a securities fraud case because the stock at issue was nationally traded).

ii. Predominance

12. Second, there are questions of fact and law common to the class that predominate over any questions affecting only individual members in this case. In making this determination, the allegations of the complaint are taken as true and the court should not consider the merits of the action. See Miner v. Gillette Co., 87 Ill. 2d 7, 18-19, 428 N.E.2d 478, 484 (1981). Moreover, the potential existence of some individual issues does not preclude a finding that

¹ The Proxy Statement was attached, in its entirety, as Group Exhibit A to Plaintiffs' Amended Class Action Complaint. Relevant portions of the Proxy Statement are attached hereto as Exhibit C.

² Illinois courts have expressly endorsed turning to federal practice for guidance in construing the numerosity requirement for class action certification. See In re Rosewell, 236 Ill. App. 3d 165, 173, 603 N.E.2d 681, 686 (1st Dist. 1992) ("There are relatively few Illinois cases involving the numerosity requirement, but Illinois courts construing the statute may follow Federal practice under Rule 23(a)(1) (F.R.C.P. 23(a)(1)), due to the similarity in language.").

common issues predominate:

[T]he hypothetical existence of individual issues is not a sufficient reason to deny the right to bring a class action. Where it appears that the common issue is dominant and pervasive, something more than an assertion of hypothetical variations of a minor character should be required to bar the action.

Miner, 87 Ill. 2d at 20, 428 N.E.2d at 485. The common questions raised by the Salomon claims include, *inter alia*, (a) whether Salomon owed a duty of reasonable care to the members of the class in opining on the fairness of the merger, (b) whether Salomon met its duty of care with respect to the members of the class, (c) whether Salomon accepted the fruits of a fraud committed by the former officers of Talman, and (d) whether Salomon participated in breaches of fiduciary duty committed by the former officers of Talman. Such common issues of law and fact, all of which arise under Illinois law, and all of which are based on the identical conduct by Salomon in connection with the merger, constitute “common questions” appropriate for class certification. See Miner, 87 Ill. 2d at 19, 428 N.E.2d at 484-85 (finding that the requirement of a predominating common question of fact or law was “easily met” because the case was “predicated on a series of essentially identical transactions by thousands of purchasers . . . which were founded upon and arose out of identical language in the promotional offer prepared by defendant”); McCarthy v. LaSalle National Bank & Trust Co., 230 Ill. App. 3d 628, 634, 595 N.E.2d 149, 152-53 (1st Dist. 1992) (finding a predominating common question because class members had been harmed “in a series of similar transactions based on similar documents,” and were thereby “aggrieved by the same or similar misconduct”); Gordon v. Boden, 234 Ill. App. 3d 195, 201, 586 N.E.2d 461, 465 (1st Dist. 1991) (“A class action can properly be prosecuted where a defendant is alleged to have acted wrongfully in the same basic manner as to an entire class.”)

(citations omitted).

More to the point, in Miner, McCarthy, and Gordon, Illinois courts certified classes based on series of *similar* transactions and wrongful conduct in the same *basic manner* as to an entire class. The case before this Court is even stronger. Salomon took part in a *single* transaction, thereby acting *identically* as to each member of the class. Thus, the common questions of fact and law clearly predominate.

iii. Adequacy

13. Third, plaintiff Weiser, as class representative, will fairly and adequately protect the interests of the class. A representative is adequate if his interests are the same as the absent class members, his interests are not collusive with the defendant's, and his attorney is "qualified, experienced, and generally able to conduct the proposed litigation." Miner, 87 Ill. 2d at 14, 428 N.E.2d at 482 (finding the proposed class representative adequate because his claim was "identical to that of each of the other class members"). Because there is no "typicality" requirement under Illinois law, the adequacy analysis is focused on whether the representative seeks relief antagonistic to the other class members, and not on whether his claim is exactly the same as theirs. Carrao, 118 Ill. App. 3d at 428, 454 N.E.2d at 790. The LaSalle defendants have already conceded that Weiser is a fair and adequate class representative. Weiser seeks to recover damages for Salomon's negligent and constructively fraudulent conduct in connection with the merger, and his interests are the same as those of the other class members. Given this essential identity of claims among all class members, Weiser's claims are not antagonistic to the absent members, and he is a fair and adequate representative for the class.

iv. Appropriateness

14. Finally, a class action is an appropriate method for the fair and efficient adjudication of this controversy. This Court should certify the class if doing so will promote efficiency, uniformity, and the ends of equity and justice. Gordon, 224 Ill. App. 3d at 203, 586 N.E.2d at 467. Still further, Illinois courts hold that satisfaction of the first three prerequisites to class certification--namely numerosity, common question, and adequacy of the class representative--establish that a class action is appropriate. Id.; Steinberg v. Chicago Medical School, 69 Ill. 2d 320, 340, 709, 371 N.E.2d 634, 644 (1977).

15. This class action is exactly the type that should be certified because it will allow the Court to adjudicate the claims of numerous class members in one proceeding, and will resolve common questions of law and fact in a uniform manner. See Carrillo v. Jam Productions, Ltd., 108 Ill. App. 3d 126, 130, 438 N.E.2d 1197, 1200 (1st Dist. 1982) ("Since there are numerous class members with substantially similar claims, a class action will conserve time, effort and expense."). The alternative--holding more than 4,000 trials on the same issues of law and fact relating to Salomon's negligence and constructive fraud--is not only monumentally inefficient, but also risks inconsistent and unjust results among parties identically situated.

D. Conclusion

The requisites for a class action under Illinois law have unquestionably been met. WHEREFORE, plaintiffs respectfully request that this Court enter an order certifying Counts V and VI of the Amended Class Action Complaint as a class action, pursuant to sections 2-801 and 2-802 of the Illinois Code of Civil Procedure, and appointing plaintiff Morris Weiser as class representative, on behalf of the following class:

All persons, other than named defendants, who owned shares of stock in the Talman Home Federal Savings and Loan Association of Illinois ("Talman") as of September 6, 1991 and whose shares of Talman stock were subject to being purchased for \$10.00 per share by a subsidiary of ABN AMRO, North America, Inc. ("ABN"), pursuant to the terms of the merger between Talman and ABN.

Dated: July 30, 1998

Respectfully submitted,

**JAMES J. MORROW and PATRICIA
MORROW, Individually and MORRIS
WEISER, Individually and as Plaintiff Class
Representative**

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