

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

In re Hungarian Holocaust Litigation

MDL No. 2207

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MEMORANDUM OF LAW OF THE REPUBLIC OF HUNGARY AND MAV Zrt. IN
SUPPORT OF MOTION FOR TRANSFER AND CONSOLIDATION OF RELATED
ACTIONS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA FOR COORDINATED AND CONSOLIDATED PRETRIAL PROCEEDINGS

Defendants, the Republic of Hungary and MAV Zrt. (the Hungarian national railway system, referred to here as “MAV”; collectively, the “Defendants”) submit this memorandum supporting consolidation of the four cases noted below in the United States District Court for the District of Columbia. The Republic and MAV, which is wholly-owned by Hungary, are foreign sovereign entities, and these cases all relate to the Holocaust in Hungary during World War II and the alleged looting of property from Holocaust victims.¹

As discussed below, consolidation is called for under 28 U.S.C. § 1407, including because the District for the District of Columbia is *the* appropriate forum as to the Defendants under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11 (the “FSIA”). As also discussed below, there are *two tag-along cases* not listed by the moving parties which should be consolidated under Rules 7.4 and 7.5 of the R.P.J.P.M.L.: Holocaust Victims of Bank Theft v.

¹ The Republic of Hungary and MAV have not yet been served in the *Simon* action under the Foreign Sovereign Immunities Act (“FSIA”). As such, the Republic (and MAV as to the *Simon* action) appear here only as to MDL-related issues. The Republic and MAV hereby expressly reserve all rights and defenses as to jurisdiction and venue, including under the FSIA.

Magyar Nemzeti Bank, No. 1:10-cv-01884 (N.D. Ill.) and Csepel v. Republic of Hungary, No. 1:10-cv-01261 (D.D.C.).

Factual Background

The plaintiffs in these actions are Jewish victims of the Holocaust as carried out in Hungary during World War II, or their heirs, who allegedly suffered looting of their property by Hungarian officials. Two of the cases (*Simon* and *Victims of the Hungarian Holocaust*) involve alleged looting relating to the deportation of Jews by train from Hungary, and plaintiffs in those two cases both agree that consolidation should occur. One of the actions (*Holocaust Victims of Bank Theft*) involves alleged looting relating to Hungarian banks, and one action (*Csepel*) involves alleged looting by Hungarian museums. Thus, all four cases involve either the Hungarian State itself and/or various of its agencies and instrumentalities. The actions all were filed within the last eight months in Chicago, Illinois or Washington, D.C.

The actions raise overlapping factual and legal claims. For example, these actions raise issues regarding Defendants' involvement in the Holocaust as carried out in Hungary, and Defendants' connection with property looting aimed at Jews during the Holocaust. Additional common issues include whether the expropriation exception to sovereign immunity under the FSIA will apply here, the extent to which the 1947 Peace Treaty to which Hungary and the United States are parties affects the justiciability of this action, and whether these cases should proceed in U.S. courts or in Hungary under Hungarian law.

ARGUMENT

I. Transfer and Consolidation Satisfies All the Requirements of Section 1407

28 U.S.C. § 1407 authorizes this Panel to transfer and consolidate two or more civil cases for coordinated pretrial proceedings upon a determination that (1) they “involv[e] one or more

common questions of fact,” (2) transfer will further “the convenience of the parties and witnesses,” and (3) transfer “will promote the just and efficient conduct of these actions.” The requirements for transfer under Section 1407 are strongly satisfied here. Plaintiffs have filed similar complaints against Defendants that raise overlapping factual issues. Transfer and consolidation will promote convenience for the parties, efficiency in pretrial proceedings, and eliminate the potential for inconsistent rulings or duplicative discovery.

a. The Related Actions Involve Common Questions of Fact

The first requirement of Section 1407 – that the actions to be transferred involve common questions of fact— is amply satisfied. The factual issues in each of the actions arise from a common core of historical facts – actions allegedly taken by Hungary and/or Hungarian state entities during and after World War II – and hence, are related. See, e.g., In re State St. Bank & Trust Co. Fixed Income Funds Inv. Litig., 560 F. Supp. 2d 1388, 1389 (J.P.M.L. 2008) (actions consolidated and transferred “revolve around the same core of factual issues relating to State Street’s representations regarding its investment strategy” and “[d]iscovery and other pretrial proceedings will undoubtedly overlap”).

Among the common questions of fact raised in all four related actions are:

1. Each Defendant’s involvement in the Holocaust in Hungary during World War II.
2. Each Defendant’s connections with property looting aimed at Hungarian Jews during the Holocaust.²
3. The extent to which Defendants acted in concert as to given plaintiffs.
4. The extent to which given Plaintiffs were affected by a given Defendants’ actions.

² Plaintiffs in the *Victims of the Hungarian Holocaust* case (the “Chicago MAV Action”) are incorrect in stating baldly that MAV’s commission of the acts alleged “is really not reasonably subject to dispute.” Plaintiffs’ Memorandum in Response to MDL Petition, at 7 (Nov. 12, 2010) (MDL No. 2207 Dkt. No. 11) (“Chicago Pl. Mem.”). To the contrary, the complaint in the Chicago MAV Action contains assertions that run counter to historical evidence as to which the court will be able to take judicial notice. As such, this is an issue of fact as to which consolidation is called for.

5. Whether Defendants are immune from the jurisdiction of U.S. courts under the FSIA, including whether the expropriation exception to immunity applies, which will potentially involve an assessment of Defendants' actions in Hungary and connections with the United States.
6. Whether the 1947 Peace Treaty to which Hungary and the United States are parties affects the justiciability of this action.
7. Whether these cases should proceed here or in Hungary under Hungarian law.³

The factual issues to be determined in each of these actions are common, making transfer and consolidation appropriate. See In re Foundry Resins Anitrust Litig., 342 F. Supp. 2d 1346, 1347 (J.P.M.L. 2004) (“[t]hese actions share allegations concerning whether the defendants participated in a combination or conspiracy to fix, raise, maintain or stabilize prices for foundry resins.”); In re Cuisinart Food Processor Anitrust Litig., 506 F. Supp. 651, 655 (J.P.M.L. 1981) (transferred actions “share[d] numerous questions of fact concerning the existence vel non of the alleged conspiracy and its scope, participants, means of operation and effects”). Any minor factual differences among the actions do not outweigh the benefits of centralization because Section 1407 “does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer.” In re Katz Interactive Call Processing Patent Litig., 481 F. Supp. 2d 1353, 1355 (J.P.M.L. 2007); In re Nat’l Sec. Agency Telecomm. Records Litig., 444 F. Supp. 2d. 1332, 1334 (J.P.M.L. 2006) (same); In re Japanese Elec. Prods. Antitrust Litig., 388 F. Supp, 565, 567 (J.P.M.L. 1975) (transfer under § 1407 “is not dependent on strict identity of issues and parties but rather on the existence of one or more common questions of fact”).

It also does not weigh against consolidation that one of the four actions is not pled as a class action (the *Csepel* action is brought by members of a family). Transfer and consolidation have been ordered when some of the cases are framed as individual actions, so long as the

³ In opposing transfer, the Chicago MAV Action Plaintiffs state that the *Bank Theft* case is not subject to this motion. Chicago Pl. Mem. at 5. That is incorrect. A Tag-Along filing was made as to the *Bank Theft* case under Rules 7.4 and 7.5 of the R.P.J.P.M.L.

requirements of Section 1407 are satisfied. See In re Satyam Computer Servs., Ltd., Sec. Litig., 712 F. Supp. 2d. 1381, 1382 (J.P.M.L. 2010) (transfer and consolidation ordered even though plaintiffs opposed transfer because it was not a putative class action); In re Worldcom, Inc. Sec. Litig. N.Y.C. Emp. Retirement Sys., No. 02 Civ. 9520, 2002 WL 31867720, at *1 (S.D.N.Y. Dec. 23, 2002) (court ordered transfer and consolidation of actions “not brought as class actions” because they had questions of fact or law in common with the consolidated class and more of such actions could come as a result of the centralization ordered by the JPML).

b. Consolidation Will Further the Convenience of the Parties and Witnesses.

Consolidation will meet the second requirement of Section 1407 because, since these actions arise from a common core of factual allegations, there is a strong likelihood of duplicative discovery demands. To the extent the cases go forward, consolidation will enable a single judge to establish a pretrial program that will minimize inconvenience to the witnesses and expenses to all the parties. Consolidation also will encourage more informal cooperation in any discovery because no party will be able to play discovery in one action off against another. See In re Denture Cream Prods. Liab. Litig., 624 F. Supp. 2d 1379, 1381 (J.P.M.L. 2009) (transfer enables one judge to formulate pretrial program that “ensures that pretrial proceedings [would] be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties”). Further supporting consolidation is that all of the actions are at an extremely early stage – indeed, service has not occurred in two.⁴

⁴ Based on the dockets, service of process is not complete in the *Simon* and *Csepel* actions. Contrary to the Chicago Pl. Mem. at 6-7, the Chicago actions also are not advanced. Motion to dismiss briefing in the MAV Chicago Action has not begun, and MAV has moved for a stay pending the decision of the Panel on consolidation. No motion to dismiss has been filed by the Hungarian Central Bank in the *Bank Theft* case. Plaintiffs will file an amended complaint on November 30 with motions due January 28, 2011. Two commercial bank defendants have moved to dismiss, but those motions are still being briefed, and plaintiffs have been permitted to propound limited written jurisdictional discovery on one of those banks.

c. Transfer and Consolidation will Promote the Just and Efficient Conduct of the Related Actions.

Transfer and consolidation is appropriate because the coordination of pretrial proceedings will promote the just and efficient conduct of these actions. In light of the nearly identical factual allegations of unlawful takings in connection with the Holocaust in Hungary, and especially given that substantive fact discovery has not yet begun in any of these actions, transfer under Section 1407 will avoid duplicative discovery and “result in a substantial savings of judicial time and resources.” See Japanese Elect., 388 F. Supp at 567.

In attempting to establish jurisdiction or proceed on the merits, Plaintiffs in each action will seek discovery against Hungarian government officials from various state-owned entities (i.e., railroads, banks, and museums). Moreover, plaintiffs claim to have conducted years of research, which information also will be subject to discovery. See Chicago Pl. Mem. at 5-6.

Thus, as recognized by the Panel in another Holocaust-related case, if these cases proceed

transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues or parties to proceed concurrently with pretrial proceedings on common matters [citation omitted]; and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties.

In re Assicurazioni Generali S.p.A. Holocaust Era Ins. Litig., No. 1374, 2000 U.S. Dist. LEXIS 17853, at *3 (J.P.M.L. Dec. 4, 2000).⁵

Failing to consolidate these actions will result in duplicative discovery efforts, potentially requiring the same government witnesses to appear in multiple actions, and the Hungarian government to produce overlapping sets of documents. Moreover, absent consolidation, the

⁵ Many Holocaust-related cases have been consolidated given the myriad common issues presented. See, e.g., In re Holocaust Era German Indus., Bank & Ins. Litig., No. 1337, 2000 U.S. Dist. LEXIS 11650 (J.P.M.L. Aug. 4, 2000); In re Nazi Era Cases Against German Defendants Litig., 334 F. Supp. 2d 690 (D.N.J. 2004); In re Holocaust Victim Assets Litig., 105 F. Supp. 2d 139 (E.D.N.Y. 2000); In re Austrian German Bank Holocaust Litig., 80 F. Supp. 2d 164 (S.D.N.Y. 2000); Bodner v. Banque Paribas, 114 F. Supp 2d 117 (E.D.N.Y. 2000).

informal agreements which allow parties to streamline discovery will be undermined because discovery agreed in one action will simply become the starting point for discovery negotiations in another. Finally, to the extent discovery disputes may occur, absent consolidation, the parties will be subject to the peril of potentially conflicting pretrial rulings, which would further undermine judicial economy. Thus, consolidation will avoid the inconvenience and needless waste of resources contemplated by Section 1407. In re Toyota Motor Corp. Hybrid Brake Mktg, MDL No. 2172, 2010 WL 3270115, at *1 (J.P.M.L. Aug. 17, 2010) (“centralization would eliminate duplicative discovery, prevent inconsistent trial rulings, and conserve the resources of the parties, their counsel, and the judiciary”); see also In re Bank of Am. Wage & Hour Emp’t Practices Litig., 706 F. Supp. 2d 1369, 1370 (J.P.M.L. 2010) (same).

II. The District of Columbia is the Proper Forum for These Cases

Defendants agree with the moving plaintiffs that a transfer to the U.S. District Court for the District of Columbia will serve the convenience of the parties and witnesses, and will promote the just and efficient conduct of this litigation. The District of Columbia is a more appropriate forum than the Northern District of Illinois for a variety of reasons.

First, under the FSIA, a foreign sovereign only may be sued in a judicial district in which (i) “a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated”; (ii) a vessel or cargo related to the claim is situated; (iii) it is licensed to or is doing business. 28 U.S.C. § 1391(f)(1)-(3). *None* of these subsections apply here. Absent any of the contacts specified in subsections (f)(1)-(3), suit is to be brought in the District of Columbia. 28 U.S.C. § 1391(f)(4). Here, *all* the relevant events at issue occurred in Hungary, and only one named class representative in any of the

actions resides in the Northern District of Illinois. Thus, by statute, the District of Columbia is the correct venue.

Second, the Republic of Hungary strongly favors the District of Columbia because (i) this is the venue designated under the FSIA; (ii) it is the location of Hungary's embassy in the United States, allowing closer coordination and monitoring of this action by the Hungarian government; and (iii) this District is where two of the actions (*Simon* and *Csepel*) already are pending. See *Battlefield Waste Disposal Litig.*, 655 F. Supp. 2d 1374 (J.P.M.L. 2009) (District of Maryland stood out as an appropriate forum because related action was already pending there and it had "a nexus to the claims" given its proximity to federal government facilities in Washington, D.C.).

Third, the District of Columbia has extensive experience with cases involving the FSIA and international issues. It also is well-versed in handling MDL matters, but is not as burdened with such cases as the Northern District of Illinois. There are 23 MDL cases pending in the Northern District of Illinois as opposed to the nine in the District of Columbia. See Summary by Docket of Multidistrict Litigation Pending as of September 30, 2010, 27-9.⁶ The *Simon* action was assigned to U.S. District Judge Bates. Based on his background, the Panel should assign the other three cases at issue to Judge Bates. As noted above, all of the actions are at an extremely early stage; indeed, in two, service has not even been completed. Hence, the consolidation and transfer of these actions would not disrupt the balance of the current docket or otherwise "be unduly disruptive." In re BP P.L.C. Sec. Litig., MDL No. 2185, 2010 WL 3238321, at *2 (J.P.M.L. Aug. 10, 2010).

⁶ Nine MDL cases is a small number for a District, which also means that this case should not cause an undue burden on the court. See *In re Trasyol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (Panel assigned case to the Southern District of Florida where "a constituent action is pending, currently has a relatively low number of MDL dockets and offers an accessible metropolitan location. . . . assigning this litigation to a jurist who has the experience to steer this litigation on a prudent course").

CONCLUSION

Based on the foregoing, the Panel should transfer the four related cases on the Docket for this matter to U.S. District Judge Bates of the District of Columbia for coordinated pretrial proceedings.

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Hungary and MAV Zrt.:

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