

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-md-02183-PAS**

IN RE: Brican America LLC Equipment
Lease Litigation

This Document Relates To All
Actions

PRETRIAL ORDER #1 FOLLOWING DECEMBER 2, 2010 STATUS CONFERENCE

THIS MATTER is before the Court following the December 2, 2010 Status Conference.

The Court welcomes the opportunity to work with the very experienced counsel in this matter and appreciates their commitment to the highest level of professionalism to achieve a speedy, just, cost-effective resolution of this matter.

As discussed at the Conference and in the Court's concurrently issued Order, the pending Motions to transfer the actions and to stay the actions in light of pending bankruptcy proceedings against Brican America LLC will be denied. As a result, all of the actions before the Court will proceed, and it is hereby ORDERED THAT

I. PRETRIAL CONSOLIDATION

The civil actions listed on Schedule A are consolidated for pretrial purposes. Any "tag-along" actions later filed in, removed to or transferred to this Court, or directly filed in the Southern District of Florida, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

II. CASE IDENTIFICATION

For the convenience of the parties and the Court, the Clerk will maintain a master docket with a single docket number and master record under the style: "In re: Brican America, LLC, Equipment Lease Litigation," Master Case No. 10-02183-MD-SEITZ/O'SULLIVAN. When a document is filed and docketed in the master case, it shall be deemed filed and docketed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in any individual cases. However, the caption may also contain a notation indicating whether the document relates to all cases or only to specified cases, as described below.

All Orders, papers, motions and other documents served or filed in this action shall bear the same caption as this Order. If the document(s) is generally applicable to all actions, the caption shall include the notation, "This Document Relates to All Actions," and the Clerk will file and docket the document(s) only in the master record. However, if a document is intended to apply *only* to a particular case, the caption shall include the notation "This Document Relates to [case number of the case(s) to which it applies]." (If the document applies to a particular case is filed conventionally, the filer shall provide extra copies to the Clerk to facilitate docketing both in the master record and the specified individual case records.)

III. ADMISSION AND ORGANIZATION OF COUNSEL

A. Admission of Counsel

Attorneys admitted to practice and in good standing of the bar of any United States District Court will be admitted to practice in this litigation upon the filing of a Notice of Appearance in (1) the Master File and (2) the particular action(s) in which they seek to appear. The requirements of Rule 4 of the Special Rules Governing the Admission and Practice of Attorneys (contained in the

Local Rules of the United States District Court for the Southern District of Florida) are waived.

Attorneys, upon filing of a Notice of Appearance, will be permitted to electronically receive Notices of Electronic Filing provided the Notice of Appearance includes a request to receive such Notices and provides an e-mail address for the Attorney. Attorneys admitted to practice in this litigation pursuant to this Section are authorized to file documents conventionally as this District does not currently have any mechanism allowing for electronic filing by attorneys located outside of the Southern District of Florida. However, where possible, the Parties should make every effort to submit all filings electronically. The Court waives any *pro hac vice* admission fees associated with this action.

B. Appointment of Defendants' Liaison Counsel

Following the discussion at the Status Conference as to the appointment of a Liaison Counsel for the Defendants, the Court hereby appoints as Defendants' Liaison Counsel **Catherine Rodriguez, Esq.**, of Levey, Filler, Rodriguez, Kelso & De Bianchi, LLP, 1688 Meridian Avenue, Suite 902, Miami Beach, FL 33139. Ms. Rodriguez shall serve as Defendants' Liaison Counsel through **December 31, 2011**, at which the point the Court will reconsider the appointment of Defendants' Liaison Counsel. As Defendants' Liaison Counsel, Ms. Rodriguez shall be responsible for

- (1) serving as the contact for the Court for all Court orders;
- (2) coordinating service and filings;
- (3) maintaining and distributing to co-counsel and to Plaintiffs' Lead Counsel an up-to-date service list;
- (4) receiving and distributing pleadings, orders, and motions by email within three (3) days

after receipt;

(5) maintaining and making available to co-counsel at reasonable hours a complete file of all documents served by or upon each party.

C. Appointment of Plaintiffs' Lead Counsel

Following the discussion as to the appointment of a Lead Counsel for the Plaintiffs, the Court hereby appoints as Plaintiffs' Lead Counsel **Ronald P. Gossett, Esq.**, of Gossett & Gossett, P.A., 4700 Sheridan St., Building I, Hollywood, FL 33021. Mr. Gossett shall serve as Plaintiffs' Lead Counsel through **December 31, 2011**, at which the point the Court will reconsider the appointment of Plaintiffs' Lead Counsel. As Plaintiffs' Lead Counsel, Mr. Gossett shall be generally responsible for coordinating the activities of Plaintiffs during pretrial proceedings. Mr. Gossett shall control, administer, and supervise the litigation by doing the following:

- (1) determining (after consultation with co-counsel) and presenting (in briefs, oral argument or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Plaintiffs on all matters arising during pre-trial proceedings;
- (2) delegating specific tasks to other counsel in a manner to assure that pretrial preparation for the Plaintiffs is conducted effectively, efficiently, and economically;
- (3) entering into stipulations with opposing counsel necessary for the conduct of the litigation;
- (4) preparing and distributing to the parties periodic status reports;
- (5) maintaining adequate time and expense records covering its services;
- (6) monitoring the activities of co-counsel to assure that schedules are met and unnecessary

expenditures of time and funds are avoided;

(7) performing such other duties as may be incidental to proper coordination of Plaintiffs' pre-trial activities or authorized by further order of the Court;

(8) coordinating the initiation and conduct of discovery on behalf of Plaintiffs consistent with the requirements of Federal Rule of Civil Procedure 26(b)(1) and (2) and (g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;

(9) conducting settlement negotiations on behalf of Plaintiffs, but he cannot enter binding agreements except to the extent he is expressly authorized to do so; and

(10) undertaking for Plaintiffs the responsibilities of Liaison Counsel described above.

IV. PLEADINGS

(1) *Common Complaint*. Plaintiffs shall file a succinct Common Complaint no later than **December 13, 2010** asserting a declaratory judgment claim(s) and all other claims Plaintiffs believe in good faith they have that can be subject to class certification. Defendants shall file a response to the Common Complaint no later than **January 12, 2010**. The purpose of having a Common Complaint is to promote a just, speedy, cost-effective resolution by focusing on the common claims that go to the heart of the dispute between a potential class and the Defendants.

(2) *Amended Individual Complaints*. The *Blauzvern* Plaintiffs shall file a Second Amended Complaint no later than **December 13, 2010** asserting any claims they wish to bring in addition to the claims raised in the Common Complaint. Should the *Wigdor* Plaintiffs wish to replead, they shall do so no later than **December 13, 2010**. **Defendants shall not file a response to the *Blauzvern* or *Wigdor* Amended Complaints until further order from this Court.** Because the

Court is allowing Plaintiffs to replead, it will deny the pending motions to dismiss without prejudice. (However, in drafting the Common Complaint and amending the Individual Complaints, the Parties shall do so in compliance with the Court's concurrently issued Order addressing the Motions To Strike with respect to the *Blauzvern* Complaint).

(3) *Tasman and DeRienzo actions*. As Plaintiffs' counsel have informed the Court that Plaintiffs in the *Tasman* and *DeRienzo* actions wish to proceed with Mr. Gossett as their counsel, Plaintiffs' counsel in *Tasman* and *DeRienzo* shall file stipulations to dismiss those actions without prejudice no later than **December 13, 2010**.

(4) *Patel action*. The *Patel* Complaint is DISMISSED without prejudice. Despite having four weeks' notice of this Status Conference, the counsel for *Patel* Plaintiffs did not appear at the Conference, did not call to explain his absence, and, reportedly did not attend a meeting counsel had to compose the Preliminary Report the Parties filed before the Conference. Had Patel's counsel attended the Conference, he would have had an opportunity to respond to the pending motion to dismiss. As the Court finds some of the arguments raised in the motion to dismiss are well taken, and as *Patel* Plaintiffs have not complied with Court orders and elected not to participate in these critical proceedings, the Court will dismiss the *Patel* complaint without prejudice. However, *Patel* Plaintiffs can join the Common Complaint to be filed on December 13, 2010.

V. CASE MANAGEMENT PLAN

The Parties shall submit a proposed Case Management Plan in accordance with the deadlines discussed at the Conference no later than **December 10, 2010**. The Plan should include a proposed schedule of status conferences. The Parties may submit the proposed Case Management Plan via e-mail to the MDL Law Clerk assigned to this case at charles_kierpiec@flsd.uscourts.gov. As

discussed at the December 2, 2010 Status Conference, the Plan shall be structured such that the Parties will take discovery (included class certification and merits discovery) on the claims raised in the Common Complaint before discovery and resolution on any remaining claims in the Amended Complaints. Plaintiffs and Defendants will each be entitled to no more than fifty (50) depositions during the initial phase of discovery. Defendants shall be permitted to depose the Proposed Class Representative Plaintiffs and a sample of the Named Plaintiffs. To control costs, the Parties shall review the discovery propounded in the Iowa actions to assess the best means of conducting discovery in this action so that it avoids duplication and allows the discovery to be readily useable in this action and the Iowa state cases.

VI. STATUS CONFERENCES

The next Status Conference shall take place on **January 19, 2011 at 8:30 a.m.** Future Status Conferences shall be established in the Case Management Order. To minimize costs and facilitate manageable conferences, all Parties are not required to attend, but shall be represented by Lead and/or Liaison Counsel. Those Parties who choose to appear at a Status Conference via telephone shall be permitted to listen but will not be allowed to speak during the Conference. Those Parties who participate by videoconference will be permitted to speak. Parties wishing to use the Court's videoconference capabilities shall call the MDL Law Clerk at (305) 523-5531 no later than **72 hours** before a Conference.

To aid the Court and the Parties in preparing for future conferences, Plaintiffs' Lead and Defendants' Liaison Counsel shall meet and confer at least ten (10) days prior to each future status conference to attempt to agree upon a proposed agenda for the conference. Not less than three (3) business days prior to the conference, the Parties shall submit a joint agenda that identifies any issue

that either or both Parties wish to raise with the Court. The Parties may submit at the same time separate statements of their positions on said issues. If the Parties agree that they would like the Court to take any action, the joint agenda shall so state. The agenda is intended to inform the Court of matters that the Parties desire to raise at the status conference, and the Court may amend or augment the agenda as it deems appropriate.

VII. CONFIDENTIALITY ORDER

The Parties shall also submit a proposed Confidentiality Order no later than **December 10, 2010**. They may submit the proposed Order to the MDL Law Clerk in the same fashion as the proposed Case Management Plan.

VIII. MDL 2183 WEBSITE

A website particular to MDL 2183 has been created and can be accessed by going to this Court's website at www.flsd.uscourts.gov, under the "General Information Tab" and the "Case Information" link. The website will contain court orders, minute entries, a calendar of upcoming events, and other relevant information.

DONE and ORDERED in Miami, Florida, this 6^R day of December, 2010.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc:
Magistrate Judge John J. O'Sullivan
All Counsel of Record