

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re RAIL FREIGHT FUEL SURCHARGE
ANTITRUST LITIGATION

This document relates to:

ALL CASES

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) MDL Docket No. 1869
) Misc. No. 07-489 (PLF)
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MEMORANDUM OPINION AND ORDER

At plaintiffs' request, this Court held a closed hearing on October 2, 2014. At that hearing, the parties revealed newly discovered evidence that plaintiffs' expert, Dr. Gordon Rausser, may have a conflict of interest in this case. Specifically, documents recently produced via subpoena indicate that Rausser may have or have had an undisclosed financial interest in the outcome of this case. Because the parties were in the initial stages of investigating this serious issue, the Court rescheduled the class certification hearing from October 6, 2014 through October 8, 2014 to November 12, 2014 through November 17, 2014.

The Court then held a second closed hearing on October 21, 2014 to discuss how this case should proceed and the parties' progress in investigating Dr. Rausser's potential conflict of interest. At that hearing, the Court vacated the class certification hearing scheduled to begin on November 12, 2014, and ordered the parties to submit briefs addressing how this case should proceed. On October 31, 2014, plaintiffs filed under seal a motion for leave to file a supplemental expert report. Also on that date, defendants filed under seal a motion to unseal the transcripts of the October 2, 2014 and October 21, 2014 hearings, principally relying on the first, fourth, fifth, and sixth Hubbard factors that a court must consider in determining whether or not

to seal judicial proceedings. United States v. Hubbard, 650 F.2d 293, 317-23 (D.C. Cir. 1980). Plaintiffs have now filed a response in which they state that they do not oppose defendants' motion, although they "do not agree with [defendants'] various characterizations of the factual record." Plaintiffs' Statement of Non-Opposition to Defendants' Motion, at 1 [Dkt. No. 744]. The Court therefore will grant defendants' motion and unseal the hearing transcripts and the subsequent briefs filed by the parties. The existing Protective Order and all other related orders of this Court remain in effect and continue to govern all filings with the Court in this case.

Accordingly, it is hereby

ORDERED that defendants' motion to unseal [Dkt. No. 740] is GRANTED; it is FURTHER ORDER that the Clerk of Court shall unseal and file on the public docket the transcripts of the October 2, 2014 hearing and the October 21, 2014 hearing; and it is

FURTHER ORDERED that the Clerk of Court shall unseal defendants' motion to unseal [Dkt. No. 740], plaintiffs' motion for leave to file a supplemental expert report [Dkt. No. 742], plaintiffs' notice of identification of proposed supplemental expert [Dkt. No. 743], plaintiffs' statement of non-opposition to defendants' motion [Dkt. No. 744], and any further related briefing.

SO ORDERED.

DATE: November 7, 2014

/s/_____
PAUL L. FRIEDMAN
United States District Judge