

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAROL FLICKER, on behalf of herself and all :
others similarly situated, :
 :
Plaintiff, :
 :
v. :
IN RE TYCO: : 03-CV-4080 (MP)
MERRILL LYNCH, PIERCE, FENNER & SMITH :
INCORPORATED AND PHUA K. YOUNG, :
 :
 :
Defendants. :
-----X

MILTON D. ABOWITZ, TRUSTEE, on behalf of :
himself and all others similarly situated, :
 :
Plaintiff, :
 :
v. :
IN RE TYCO: : 03-CV-4174 (MP)
MERRILL LYNCH, PIERCE, FENNER & SMITH :
INCORPORATED AND PHUA K. YOUNG, :
 :
 :
Defendants. :
-----X

TERI and GLENN RASMUSSIN, on behalf of :
themselves and all others similarly situated, :
 :
Plaintiff, :
 :
v. :
IN RE TYCO: : 03-CV-4310 (MP)
MERRILL LYNCH, PIERCE, FENNER & SMITH :
INCORPORATED AND PHUA K. YOUNG, :
 :
 :
Defendants. :
-----X

SCOTT CLARK, on behalf of himself and all others :
others similarly situated, :
 :
Plaintiff, :
 :
v. :
IN RE TYCO: : 03-CV-4417 (MP)
MERRILL LYNCH, PIERCE, FENNER & SMITH :
INCORPORATED AND PHUA K. YOUNG, :
 :
 :
Defendants. :
-----X

-----X
L.A. MURPHY, individually and on behalf of all others :
similarly situated, :
Plaintiff, :
v. :
IN RE TYCO: : 03-CV-5412 (MP)
MERRILL LYNCH, PIERCE, FENNER & SMITH :
INCORPORATED AND PHUA K. YOUNG, :
Defendants. :

-----X
JEFF ADAMS, individually and on behalf of all others :
similarly situated, :
Plaintiff, :
v. :
IN RE TYCO: : 03-CV-5550 (MP)
MERRILL LYNCH, PIERCE, FENNER & SMITH :
INCORPORATED AND PHUA K. YOUNG, :
Defendants. :

CASE MANAGEMENT ORDER NO. 1

I. CONSOLIDATION

Pursuant to Fed. R. Civ. P. 42 and Section 21D(a)(3)(B)(ii) of the Securities Exchange Act of 1934, the following actions, brought on behalf of purchasers of the common stock of Tyco International, Ltd., are hereby consolidated for all purposes:

Carol Flicker v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phua K. Young 03-CV-4080 (MP)

Milton Abowitz, Trustee v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phua K. Young 03-CV-4174 (MP)

Teri and Glenn Rasmussin v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phua K. Young 03-CV-4310 (MP)

Scott Clark v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phua K. Young 03-CV-4417 (MP)

L.A. Murphy v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phua K. Young 03-CV-5412 (MP)

The consolidated actions shall be carried in the Clerk's office and known as In re Merrill Lynch Tyco Research Securities Litigation, 03-CV-4080 (MP). The Clerk shall administratively close all of the above-captioned actions, other than 03-CV-4080 (MP).

If an action that arises out of the same subject matter as the Merrill Lynch Tyco Research action is brought by shareholders of Tyco International, Ltd., is either filed in or transferred to this District, then counsel to the parties in Merrill Lynch Tyco Research shall serve a copy of this Order upon counsel for the parties in the new action. If no party to the new action objects within ten days after service of this Order, the new action shall be consolidated with the Merrill Lynch Tyco Research action and the Clerk shall administratively close the new action.

II. APPOINTMENT OF LEAD PLAINTIFF

The Court, having received one motion for appointment of lead plaintiff prior to the August 4, 2003 time deadline imposed by the Private Securities Litigation Reform Act of 1995 (PSLRA), *see* 15 U.S.C. § 78u-4(a)(3)(A)(i),¹ in accordance with its statutory obligations under the PSLRA hereby adopts a presumption that Ronald A. and Deborah S. Gutzwiller are the most adequate plaintiffs, having the largest stake in the relief sought by the class, and who, the Court finds, otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. In addition, the time deadline for filing opposing affidavits and answering memoranda, if any, under Local Civil Rule 6.1(b)(2), has expired. No party has sought to rebut the presumption that the Gutzwillers are the most adequate plaintiffs. The Gutzwillers are hereby appointed the most adequate lead plaintiffs, subject to later modification or revision by the Court.

III. LEAD COUNSEL

Ronald A. and Deborah S. Gutzwiller seek the Court's approval for their choice of Law Offices of Bernard M. Gross, P.C. as Lead Counsel. The Court hereby approves the Gutzwiller's

¹ The PSLRA-required Notice was published on June 5, 2003, marking the start of the 60-day statutory period for filing Lead Plaintiff motions.

choice of Lead Counsel. This approval is subject to later modification or revision by the Court.

Lead Counsel shall receive and distribute notices or orders from the Court to Plaintiffs' counsel in the constituent actions, beginning with this Order and subsequently, and shall function as a primary contact between Plaintiffs' Counsel and Defendants' Counsel.

Counsel is advised that the Court does not look favorably upon and will not permit double-charging by multiple firms or local counsel for the same work or representation. Lead Counsel must maintain complete and accurate records of all time charges pertaining to its representation in the consolidated litigation and furnish copies of such records to the Court in camera. This record-keeping and reporting requirement is in addition to any other such requirements that may be imposed by law and commences as of the date of this Order. Reports for quarters ending March 31, June 30, September 30, and December 31 will be due on the fifteenth of the month following.

IV. CONSOLIDATED AMENDED COMPLAINTS

Within 30 days of the date of this Order, Lead Counsel shall file a consolidated amended complaint, with two courtesy copies submitted to Chambers. Lead Counsel is responsible for obtaining the necessary information such that the consolidated amended complaint will comply with the pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure and the PSLRA, in particular 15 U.S.C. § 78u-4(b)(1) & (2). The factual allegations must be specific to the securities of Tyco International, Ltd., and should clearly allege who said what to whom concerning Tyco. The consolidated amended complaint should also be carefully framed in order that it may fully comply with all applicable law regarding the pleading of loss causation.

Defendants shall move, answer or otherwise respond to the consolidated amended complaint within 45 days after service of the consolidated amended complaint.

So ordered.

Dated: August 26, 2003

MILTON POLLACK
SENIOR UNITED STATES DISTRICT JUDGE