UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAUL STEVELMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff	:	
v.	:	5:91-CV-00682 (EBB)
ALIAS RESEARCH and STEPHEN R.B. BINGHAM, Defendants	:	

RULING ON MOTION FOR RECONSIDERATION

INTRODUCTION

In its original Ruling on Plaintiff's Motion for Class Certification, this Court certified the class for the period of June 27, 1991 through and including January 27, 1992. Plaintiff moves for reconsideration of this decision only as to the beginning of the class period.

STATEMENT OF FACTS

The facts of this case have been set forth numerous times by this Court and the Court of Appeals for the Second Circuit. The Court presumes familiarity with these Rulings. Accordingly, the Court sets forth only those facts deemed necessary to an understanding of, and the decision rendered on, this Motion.

In their Amended Class Action Complaint, Plaintiffs allege that on May 28, 1991, Defendant Alias issued a press release

containing materially false statements with respect to the Company's earnings for the quarter ending April 30, 1991. They further contend that, no later than May 28, 1991, the Company had engaged in improper recognition of revenue, the reported net sales, net income and earnings per share reported in the First Quarter press release were materially overstated. The Amended Complaint alleges that, on May 31, 1991, William McClintock, the Chief Financial Officer of Alias, engaged in insider trading [1]/ just days before he signed the Form 10-Q for Alias' second fiscal quarter, which contained the allegedly materially false and misleading statements, and just days after the Company announced its results for that Quarter. Accordingly, the Amended Complaint strongly pleads that McClintock had knowledge of and participated in the preparation of the false and misleading statements.

LEGAL ANALYSIS

Defendant asks this Court to look at the underlying merits of this case under the guise of arguing for a June 27, 1991 beginning class date. As the Supreme Court stated in the landmark case of Eisen v. Carlisle & Jacqelin, 417 U.S. 156, 177 (1974):

> [w]e find nothing in either the language or the history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.

[1]/ McClintock was prosecuted by the SEC for insider trading.

As the Second Circuit has written, in interpreting Eisen, it is "improper for a district court to resolve substantial questions of fact going to the merits when deciding the scope or time limits of a class." Sirota v. Solitron Devices, Inc., 673 F.2d 566, 572 (2d Cir. 1982), *cert. denied*, 459 U.S. 838, *and cert. denied,* 459 U.S. 908 (1982). *Accord*, In re Health Management, Inc., Securities Litigation, 184 F.R.D. 40 (E.D.N.Y. 1999).

From a reading of these cases, it becomes clear that "[t]his court will not inquire into the merits of a case by determining which statements [and actions by the defendants] actually opened the door to litigation and which slammed the door shut." Bharucha v. Reuters Holding, 1993 WL 657863 at *3 (E.D.N.Y. 1993)(editing in original). "The court declines to rule on the factual issue of whether there had been a proper curative disclosure . . . [and] will certify the broader class period." Nathan Gordon Trust v. Northgate Exploration Ltd., 148 F.R.D. 105, 108 (S.D.N.Y. 1993). Likewise, this Court will not decide the factual question of McClintock's involvement but will also, in the interests of justice, certify the broadest class. "[A] jury can determine which statements [or actions of the various defendants], if any, they find actionable and therefore, which plaintiffs, if any can recover from which defendants." Bharucha, 1993 Wl at *4.

Accordingly, the Motion for Reconsideration [Doc. No. 82] is GRANTED and the Court now sets the class period to be the more inclusive one, beginning on May 28, 1991. Concomitantly, the Motion to Amend the Amended Class Action Complaint [Doc. No. 95] is also GRANTED.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of November, 2000.