

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: BANK OF AMERICA WAGE AND HOUR
EMPLOYMENT PRACTICES LITIGATION**

Crystal E. Hetherington v. Bank of America, N.A., et al.,)
S.D. California, C.A. No. 3:12-1559)

MDL No. 2138

ORDER DENYING TRANSFER

Before the Panel:* Pursuant to 28 U.S.C. § 1407(c), defendant Bank of America, N.A. (Bank of America) moves to transfer the present action to MDL No. 2138. Plaintiff opposes the motion.

This action (*Hetherington*) alleges that Bank of America fails to pay all overtime wages owed to non-exempt employees who receive a “Rewarding Success bonus.” The actions originally centralized in this MDL involve somewhat related allegations that Bank of America routinely fails to pay its employees for overtime work in violation of the Fair Labor Standards Act. *See In re: Bank of Am. Wage & Hour Emp’t Practices Litig.*, 706 F. Supp. 2d 1369, 1371 (J.P.M.L. 2010). The operative complaint in the MDL also alleges that Bank of America fails to properly pay overtime on non-discretionary bonuses provided to its non-exempt employees.

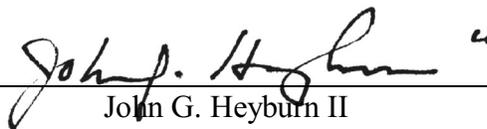
After considering all argument of counsel and consulting with the transferee judge, we conclude that inclusion of this action in MDL No. 2138 is not necessary to achieve the just and efficient conduct of the litigation. As we have previously observed, “multidistrict litigation is not static.” *See MDL No. 1769, In re: Seroquel Prods. Liab. Litig.*, Order Vacating Conditional Transfer Order, at 1 (J.P.M.L. Feb. 5, 2010). The relative merits of transferring new tag-along actions to an MDL can change over time as the transferee court completes its primary tasks, and at a certain point the benefits of transfer should not be assumed to continue. *See id.* The transferee court recently ruled on motions for class certification and for conditional certification of a collective action, and discovery is at an advanced stage. We are of the opinion that proceedings in this MDL have advanced to the point that the continued transfer of related actions is no longer necessary to achieve the purposes of 28 U.S.C. § 1407.

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407(c), for transfer of this action is denied.

* Judge Kathryn H. Vratil took no part in the decision of this matter.

-2-

PANEL ON MULTIDISTRICT LITIGATION



A handwritten signature in black ink, reading "John G. Heyburn II", is positioned above a horizontal line. The signature is written in a cursive style with a double underline at the end.

John G. Heyburn II
Chairman

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan

Paul J. Barbadoro
Charles R. Breyer