

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: WAL-MART ATM FEE NOTICE LITIGATION

Shawn Traylor v. Cash Depot LLC, et al.,)
D. Connecticut, C.A. No. 3:12-01167) MDL No. 2234

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff in the District of Connecticut *Traylor* action moves for an order vacating our prior order that conditionally transferred this action to MDL No. 2234. Defendants Wal-Mart Stores, Inc. and Satellite Receivers, Ltd., d/b/a Cash Depot LLC, oppose the motion to vacate and favor inclusion of this action in MDL No. 2234.

Plaintiff alleges that an ATM machine in a Norwalk, Connecticut Wal-Mart store has a fee notice that was inconspicuously posted at or below knee level and out of eyesight of any person accessing the ATM, in violation of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq. (EFTA). The EFTA requires that ATMs contain posted notices informing consumers that the ATM and/or the consumer’s financial institution might charge fees for withdrawals made from the ATM, and it imposes strict liability on ATM operators that fail to comply with its disclosure requirements. The actions centralized in MDL No. 2234 involve similar allegations that defendants violated the EFTA by failing to post physical notices on certain of their ATMs. *See In re Wal-Mart ATM Fee Notice Litig.*, 785 F. Supp. 2d 1380, 1381 (J.P.M.L. 2011).

Plaintiff argues that *Traylor* involves unique issues of fact because he alleges that the notice posted on the ATM was inconspicuous, but not absent. We rejected a nearly identical argument by this plaintiff in a motion to vacate a conditional transfer order in *In re Cardtronics ATM Fee Notice Litigation*, MDL No. 2245, Doc. No. 52 (J.P.M.L. Dec. 11, 2012) (denying motion to vacate CTO). Were MDL No. 2234 in the same procedural posture as that MDL, we would similarly reject plaintiff’s arguments here.

However, “[m]ultidistrict litigation is not static.” *See In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F. Supp. 2d 1371, 1372 (J.P.M.L. 2009). 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.* Based upon our review of the progress of this litigation and our consultation with the transferee judge, fact discovery in this MDL has been completed and, within days of this order, the parties will have filed dispositive and class certification motions.

* Judge Marjorie O. Rendell took no part in the decision of this matter.

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Accordingly, after considering all argument of counsel, we are of the opinion that the 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. We see no reason why, subject to the same conditions imposed on the parties to MDL No. 2234, that the parties in *Traylor* or any other subsequent actions should not be able to avail themselves of the documents and depositions accumulated in this MDL, and the judges presiding over such actions may find useful guidance in the Honorable Jon P. McCalla's pretrial rulings. Thus, even absent transfer, most of the benefits of the MDL are available to expedite resolution of *Traylor*.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-4" is vacated.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written over a horizontal line.

John G. Heyburn II
Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Lewis A. Kaplan

W. Royal Furgeson, Jr.
Charles R. Breyer