

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: MIDLAND CREDIT MANAGEMENT, INC.,
TELEPHONE CONSUMER PROTECTION ACT
(TCPA) LITIGATION**

MDL No. 2286

TRANSFER ORDER

Before the Panel:* Plaintiffs in the two actions listed on Schedule A move under Panel Rule 7.1 to vacate our orders that conditionally transferred those actions to MDL No. 2286. Defendants Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc. (collectively, Midland), oppose the motions.

The actions encompassing MDL No. 2286 involve allegations that Midland violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by placing debt collection calls to debtors' cellular telephones using an automated dialer or an artificial or prerecorded voice, without the debtors' consent. *See In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act Litig.*, 818 F. Supp. 2d 1377 (J.P.M.L. 2011). Plaintiffs argue that their actions are not appropriate for inclusion in MDL No. 2286 primarily because: (1) their actions bring claims for violation of other statutes, such as the Fair Debt Collection Practices Act (FDCPA) and state consumer protection statutes; (2) their actions may involve factual differences from the actions already pending in MDL No. 2286, such as the use of different technology and equipment to contact plaintiffs or calls directed to non-debtor plaintiffs; and (3) transfer would inconvenience plaintiffs.

After considering the argument of counsel, we conclude that these actions involve common questions of fact with the actions previously transferred to MDL No. 2286, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions all involve a common factual core—the allegation that Midland sought to collect a debt by contacting plaintiffs on their cellular telephones using an automatic telephone dialing system without prior consent. Thus, these actions will involve similar factual inquiries and discovery about Midland's collection call policies and procedures, as well as its policies and procedures for obtaining and recording a consumer's consent to receive collection calls. That discovery will be necessary regardless of whether Midland has employed new technology or systems since the Panel created this MDL.

Contrary to plaintiffs' arguments, MDL No. 2286 already includes numerous actions alleging claims under the FDCPA and other consumer protection statutes. Similarly, this MDL includes actions brought by both debtors and non-debtors who allegedly received debt collection calls from

* Judge Charles R. Breyer took no part in the decision of this matter.

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Midland in violation of the TCPA. *See, e.g., In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, MDL No. 2286, ECF No. 392, at 2 (J.P.M.L. Oct. 9, 2014) (transferring actions in which non-debtors received debt collection calls). In any event, Section 1407 does not require a complete identity or even a majority of common factual and legal issues as a prerequisite to centralization. *See In re Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010).

We are sympathetic to plaintiffs' concerns about convenience, but we are not persuaded that they justify excluding these actions from the centralized proceedings. The Panel has held repeatedly that, while it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL No. 2226, 2012 WL 7764151, at *1 (J.P.M.L. Apr. 16, 2012). The transferee judge is in the best position to structure proceedings so as to minimize inconvenience to any individual party.

We reject the plaintiff's alternative request in the Northern District of West Virginia *Ludwig* action to separate and remand the state statutory claim in that action. Plaintiff's state-law claim addresses the same conduct as the TCPA claim and undoubtedly will involve similar, if not identical discovery. Separating and remanding the state-law claim would only increase the likelihood of duplicative discovery.

Similarly, we reject the additional argument of the plaintiff in the Southern District of Florida *Canter* action that transfer is inappropriate because she intends to opt out of any class-wide settlement reached in the MDL. Her choice not to participate in a class settlement does not determine whether we should transfer this action to the MDL. *See In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, MDL No. 2286, ECF No. 392, at 2 (J.P.M.L. Oct. 9, 2014) (transferring action over objection that plaintiff intended to opt out of any potential class-wide settlement). We instead look to whether the action involves one or more common questions of fact, such that transfer for centralized proceedings will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions. Regardless of whether plaintiff intends to join any potential class-wide settlement, transfer of *Canter* to MDL No. 2286 is appropriate.

Likewise, *Canter*'s argument that transfer is inappropriate because of non-compliance with Section 1407(c)(ii)—which requires that, in proceedings for transfer initiated by a motion, the motion to transfer be filed in the district court in which the moving party's action is pending—lacks merit. The authority for the conditional transfer order procedure set out in Panel Rule 7.1 stems not from Section 1407(c)(ii), but from Section 1407(c)(i). *See* 28 U.S.C. § 1407(c)(i) (“Proceedings for the transfer of an action under this section may be initiated by—(i) the judicial panel on multidistrict litigation upon its own initiative.”). *See also In re Gypsum Wallboard*, 303 F. Supp. 510, 510 (J.P.M.L. 1969) (discussing the genesis of the conditional transfer order procedure).

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IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Southern District of California and, with the consent of that court, assigned to the Honorable Michael M. Anello for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

**IN RE: MIDLAND CREDIT MANAGEMENT, INC.,
TELEPHONE CONSUMER PROTECTION ACT
(TCPA) LITIGATION**

MDL No. 2286

SCHEDULE A

Southern District of Florida

CANTER v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 9:14-81073

Northern District of West Virginia

LUDWIG v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 1:14-00100