

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: JPMORGAN CHASE MORTGAGE
MODIFICATION LITIGATION**

Gary F. Lowry, et al. v. JPMorgan Chase Bank N.A., et al.,)
D. Arizona, C.A. No. 3:11-08177)

MDL No. 2290

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, defendants JPMorgan Chase Bank N.A. as successor in interest to EMC Mortgage LLC, as successor by merger to Chase Home Finance LLC, and Bear Stearns LLC (collectively, Chase) move to vacate our order that conditionally transferred this action (*Lowry*) to MDL No. 2290. Plaintiffs oppose the motion to vacate and argue that their action should be transferred to the Central District of California.

The Panel originally centralized in MDL No. 2290 actions sharing questions of fact arising from allegations that Chase regularly fails to comply with the terms of the Home Affordable Modification Program (HAMP) and has breached contracts with plaintiffs and class members by failing to permanently modify homeowners' mortgages under HAMP or under other in-house loan modification programs. *See In re: JPMorgan Chase Mortg. Modification Litig.*, 818 F. Supp. 2d 1378, 1379 (J.P.M.L. 2011). Defendants argue that this action does not share sufficient factual questions with the actions comprising MDL No. 2290 because, *inter alia*, (1) it is brought as an individual action, while all MDL No. 2290 actions are class actions; and (2) unlike the MDL No. 2290 actions, plaintiffs do not allege they entered into a trial period plan agreement (TPP), but rather allege that Chase improperly denied their request or application to enter into a TPP. In support of transfer, plaintiffs argue, *inter alia*, (1) the Panel often centralizes individual actions with class actions in one proceeding; and (2) though plaintiffs did not enter into a TPP, they allege Chase engaged in a common course of misconduct with respect to their treatment of homeowners seeking loan modifications under HAMP.

Plaintiffs are correct that we have often included individual and class actions in a single MDL proceeding. *See, e.g., In re Portfolio Recovery Assocs., LLC, Tel. Consumer Prot. Act Litig.*, MDL No. 2295, Transfer Order at 1 (J.P.M.L. Jun. 8, 2012). In this instance, however, we are persuaded that the unique individual questions of fact at issue in the *Lowry* action would overwhelm any common questions of fact, and that transfer of this particular action would not be the most efficient path for the litigation. All actions in MDL No. 2290 are putative class actions. Indeed, the transferee court granted the motion of one plaintiff to voluntarily dismiss her class claims and to remand her case to the transferor court so the case could proceed on an individual basis. Furthermore, while plaintiffs seek transfer of their action to MDL No. 2290, it appears they are confused as to the effect of such transfer. They request the Panel transfer their action to the Central District of California, but MDL

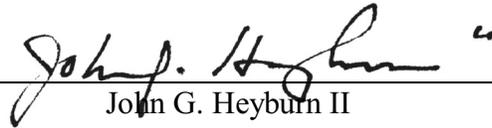
-2-

No. 2290 is proceeding in the District of Massachusetts and any transfer pursuant to Section 1407 would require transfer of *Lowry* to that district, which plaintiffs have stated would be financially burdensome. Regardless of whether plaintiffs would prefer to remain in the District of Arizona or to transfer this case to the District of Massachusetts, we find that *Lowry* is not sufficiently related to MDL No. 2290 to warrant transfer.

Consequently, after considering all argument of counsel, we conclude that inclusion of this action in MDL No. 2290 would not necessarily serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-5" is vacated insofar as it relates to this action.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II

Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Charles R. Breyer

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