

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: CAPITAL ONE TELEPHONE CONSUMER
PROTECTION ACT LITIGATION**

MDL No. 2416

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff in the District of South Carolina action (*Kopchak*) listed on the attached Schedule A has moved to vacate our order conditionally transferring the action to the Northern District of Illinois for inclusion in MDL No. 2416. Responding defendant Capital One Bank (USA), N.A. (Capital One) opposes the motion.

Plaintiff's arguments in support of vacatur are unpersuasive. Although plaintiff contends that Capital One initially told him that it had made no calls to plaintiff's cell phone, Capital One represents that it subsequently discovered that it had attempted to call some of the telephone numbers that plaintiff provided to the bank in March 2014, including an alleged cell telephone number, and that it has produced to plaintiff documents evidencing such calls.

Plaintiff's argument that he has asserted a unique South Carolina statutory claim is unavailing. This MDL already includes various state statutory claims. Furthermore, as we repeatedly have held, Section 1407 "does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer." *See In re: Merscorp Inc., et al., Real Estate Settlement Procedures Act (RESPA) Litig.*, 560 F. Supp. 2d 1371, 1372 (J.P.M.L. 2008) (citing *In re: Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1376, 1378 (J.P.M.L. 2008)).

Plaintiff also requests, in the alternative, that if we deny vacatur, we should separate and remand his claims against defendant United Recovery Systems, LP (URS), which plaintiff alleges is a third-party debt collector. We decline to grant this relief. Transfer under Section 1407 "does not require a complete identity of parties." *See In re: Navistar 6.0 L Diesel Engine Prods. Liab. Litig.*, 777 F. Supp. 2d 1347, 1348 (J.P.M.L. 2011). Transfer of plaintiff's entire action, including his claims against URS, is appropriate here, because almost all the claims are brought against both Capital One and URS, and clearly will require discovery regarding the business relationship between the two entities, including the instructions, if any, that Capital One gave URS regarding its collection call policies and procedures.¹

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

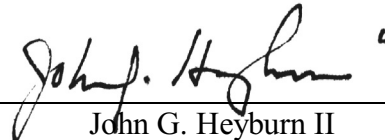
¹ Indeed, in our initial transfer order, we described the subject actions as sharing factual issues regarding, *inter alia*, "Capital One's policies and procedures for calling, or directing its agents to call, consumers." *See In re: Capital One Tel. Consumer Prot. Act Litig.*, 908 F. Supp. 2d 1366, 1367 (J.P.M.L. 2012) (emphasis added). At least two other debt collection agencies are defendants in one
(continued...)

- 2 -

After considering all argument of counsel, we find that *Kopchak* involves common questions of fact with actions previously transferred to MDL No. 2416, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our original order directing centralization. In that order, we held that the Northern District of Illinois was an appropriate Section 1407 forum for actions sharing factual issues “regarding Capital One’s policies and procedures with respect to the placement of collection calls, as well as its policies and procedures for obtaining and recording a consumer’s consent to receive such calls.” See *In re: Capital One Tel. Consumer Prot. Act Litig.*, 908 F. Supp. 2d 1366, 1367 (J.P.M.L. 2012). This action unquestionably implicates those issues. See *Kopchak* Compl. ¶¶ 7, 14, 15 (alleging that defendants made “multiple harassing” collection calls to plaintiff’s home and cellular telephone numbers, that plaintiff did not expressly consent to the placement of such calls, and that plaintiff repeatedly told defendants to stop calling him).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable James F. Holderman for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Sarah S. Vance

¹(...continued)
or more of the previously centralized actions.

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MDL No. 2416

SCHEDULE A

District of South Carolina

KOPCHAK v. CAPITAL ONE BANK USA NA, ET AL., C.A. No. 3:13-03018