

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: CONVERGENT TELEPHONE CONSUMER
PROTECTION ACT LITIGATION**

Brenda Lee Evans v. FIA Card Services, N.A., et al.,)
M.D. Pennsylvania, Bky. Advy. No. 5:13-00217)

MDL No. 2478

ORDER DEFERRING DECISION

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff in an adversary proceeding pending in the U.S. Bankruptcy Court for the Middle District of Pennsylvania (*Evans*) moves to vacate our order that conditionally transferred *Evans* to MDL No. 2478. Defendant Convergent Outsourcing, Inc., initially opposed the motion, but subsequently dropped its opposition in light of a proposed settlement between the parties in *Evans*.

On January 10, 2014, plaintiff requested that the bankruptcy court remove *Evans* from the hearing list because of the potential for settlement. On January 13, 2014, the bankruptcy court so removed *Evans* and ordered that if a stipulation or request to re-list *Evans* for hearing was not made by February 9, 2014, the court might dismiss *Evans* without further notice. On February 10, 2014, the bankruptcy court extended the time in which to request the re-listing of *Evans* for hearing until March 11, 2014, in order to allow the parties more time to reduce their settlement to writing.

The parties now agree that *Evans* is “no longer pending” and that the conditional transfer order may be vacated. See *In re Convergent Tel. Consumer Prot. Act Litig.*, MDL No. 2478, ECF No. 63 (Supplemental Information). The parties’ agreement, however, is no substitute for fact. Until *Evans* is dismissed by the bankruptcy court—which has not yet occurred—it remains pending and subject to transfer. Simply vacating the conditional transfer order while *Evans* remains pending creates the potential for unnecessary additional motion practice in the event that the potential settlement between the parties falls through. On the other hand, transfer of *Evans* to the MDL when a settlement is imminent has the potential to delay the resolution of that action. See, e.g., *In re Ocwen Loan Servicing, LLC, Fair Debt Collection Practices Act (FDCPA) Litig.*, ___ F. Supp. 2d ___, 2013 WL 6825566, at *1 (J.P.M.L. Dec. 16, 2013) (“Centralization at this time could delay the proceedings on the proposed settlement and result in additional expense for the litigants and the courts in establishing an MDL proceeding with little or no benefit.”). Accordingly, we are of the opinion that deferring our decision on plaintiff’s motion to vacate our conditional transfer order until finalization of the settlement will best serve the convenience of the parties and witnesses and further the just and efficient conduct of this case.

* Judges Paul J. Barbadoro and Lewis A. Kaplan took no part in the decision of this matter.

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IT IS THEREFORE ORDERED that our decision on plaintiff's motion to vacate the conditional transfer order is deferred until the U.S. Bankruptcy Court for the Middle District of Pennsylvania either dismisses *Evans*—at which point the motion to vacate will become moot—or re-lists the action for hearing. The parties shall promptly notify the Panel of the disposition of *Evans*.

PANEL ON MULTIDISTRICT LITIGATION



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