

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: MONITRONICS INTERNATIONAL, INC.,
TELEPHONE CONSUMER PROTECTION ACT (TCPA)
LITIGATION**

MDL No. 2493

TRANSFER ORDER

Before the Panel: Plaintiff moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action listed on the attached Schedule A (*Lucas*) to MDL No. 2493. In the alternative, plaintiff requests separation and remand of certain state law claims to the transferor court. Defendant Monitronics International, Inc. (Monitronics) opposes the motion and supports transfer. Defendant Alliance Security, Inc. (Alliance) did not respond directly to the motion, but filed a suggestion of bankruptcy stating that it recently had filed a voluntary bankruptcy petition.¹

The actions in MDL No. 2493 involve allegations that Monitronics, a home security system and alarm monitoring company, violated the TCPA when Monitronics or its alleged agents placed automated telemarketing calls to persons on the national Do Not Call Registry or to residential or wireless telephones without the individual's consent. *See In re: Monitronics Int'l, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 988 F. Supp. 2d 1364 (J.P.M.L. 2013). In *Lucas*, plaintiff alleges that Monitronics, Alliance, and agents acting on their behalf placed telemarketing calls to sell home alarm system and monitoring services to his residential phone number without his consent, using an artificial or prerecorded voice, in violation of the TCPA and Ohio laws. He further alleges that his number was on the national Do Not Call Registry at all relevant times.

After considering the argument of counsel, we conclude that this action shares questions of fact with actions transferred to MDL No. 2493 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. Like many of the already-centralized actions, *Lucas* involves factual questions concerning "Monitronics' policies and procedures for calling consumers, directly or through agents, for the purpose of selling home security products or services, as well as its procedures for obtaining and recording a consumer's consent to receive such calls." *See In re: Monitronics Int'l, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 988 F. Supp. 2d at 1366. Thus, the action will benefit from common discovery and pretrial proceedings.

¹ Defendants Defend America, LLC, Lucky 7, Inc PH, Jessica T. Merrick, Rick A. Merrick, and Tyler Coon did not respond to the motion. Plaintiff has filed a notice of voluntary dismissal as to the latter three defendants. Additionally, former defendant Comet Media, Inc., was dismissed voluntarily in state court.

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In support of his motion to vacate, plaintiff principally argues that (1) transfer is not appropriate while his motion for remand to state court is pending; (2) the MDL is too advanced to incorporate a new tag-along action; and (3) he intends to opt-out of the proposed class settlement in the MDL. These arguments are unconvincing. We have held that jurisdictional issues generally do not present an impediment to transfer, as plaintiff can present his motion for remand to the transferee judge. We find that any purported delay or prejudice is not an obstacle to transfer. While transfer of an action might result in some delay to that action, transfer is appropriate if it furthers the expeditious resolution of the litigation taken as a whole. *See In re: Crown Life Ins. Co. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

Additionally, there are ongoing common pretrial proceedings in the MDL, which make transfer of *Lucas* appropriate even though the MDL has reached an advanced stage. Although the discovery deadline recently expired,² there are significant pretrial matters before the transferee court including proceedings on the proposed class settlement. While plaintiff represents that he intends to opt out of any class settlement, settlement approval proceedings remain pending. The Panel often has recognized that transfer of putative opt-out actions to an advanced MDL with a proposed class settlement is desirable because of “the efficiencies from the transferee court’s management of overlapping actions, integration of existing discovery with discovery in the new actions, and the court’s expertise in the issues.”³ Moreover, if the settlement receives final approval, the transferee judge, in his discretion, will need to determine the extent to which any opt-out actions warrant further coordinated pretrial proceedings in the MDL. And if the settlement does not receive final approval, significant pretrial proceedings likely will remain.⁴

Plaintiff’s alternative request for simultaneous separation and remand of certain state law

² There is reportedly some amount of limited purpose discovery that remains to be done after the discovery cut-off, but there is no dispute that discovery is nearly complete.

³ *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720, Doc. No. 204, Transfer Order at 2 (J.P.M.L. Oct. 16, 2013).

⁴ For example, prior to the proposed settlement, Monitronics filed a motion for summary judgment, which remains pending. In this regard, plaintiff raises a due process objection to being required to participate in the MDL summary judgment proceedings, arguing that he will not have a meaningful opportunity to respond or could be subject to a decision as to which he was not heard. These are essentially case management concerns that plaintiff may bring to the attention of the transferee court. *See, e.g., In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720, Doc. No. 204, Transfer Order at 2 (J.P.M.L. Oct. 16, 2013) (“Any objections to specific rulings being applied to them [tag-along plaintiffs] . . . can be argued to the transferee court”). The Panel routinely transfers tag-along actions to MDLs with pending or resolved dispositive motions, leaving it to the transferee court to decide how plaintiff’s objections should be addressed.

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claims to the transferor court also is unconvincing. Under his proposal, his TCPA claim and two state law claims would be transferred to the MDL, while other state law claims pertaining to his pending motion for preliminary injunction and motion for surety bond would be separated and remanded to the Southern District of Ohio. The essence of plaintiff's arguments is that these state law claims present unique Ohio law issues which can be decided more quickly and conveniently in an Ohio court. But the TCPA claim and all state law claims are based on the same alleged telemarketing calls and Monitronics' and Alliance's alleged roles in all of the calls. In these circumstances, we find that separation and remand is not appropriate, as it likely would result in duplicative pretrial proceedings and undermine the benefits of transfer.

Moreover, the involvement of allegedly unique state laws is no impediment to transfer. The Panel has recognized that "the presence of additional facts or differing legal theories does not prevent the transfer of an action that shares significant factual issues with those in the MDL . . ." ⁵ Indeed, "the Panel routinely transfers tag-along actions with allegedly unique state law claims." ⁶ Plaintiff's request for separation and remand for the convenience of plaintiff and his potential witnesses is equally unavailing. The Panel looks to "the overall convenience of the parties and witnesses, not just those of the parties to a single action." *See, e.g., In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1352 (J.P.M.L. 2012). ⁷

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Northern District of West Virginia and, with the consent of that court, assigned to the Honorable John Preston Bailey for inclusion in the coordinated or consolidated pretrial proceedings.

⁵ *See, e.g.*, MDL No. 2493, Transfer Order (*Worsham*), Doc. No. 318, at 2 (J.P.M.L. Dec. 8, 2015) (internal quotation marks omitted).

⁶ *Id.*

⁷ Plaintiff also argues that his motion for preliminary injunction may require an evidentiary hearing in the nature of a "mini-trial," which purportedly is not authorized by Section 1407. But the plain language of Section 1407 authorizes the transfer of actions for "pretrial proceedings," which includes pretrial evidentiary hearings and potentially dispositive motions. Thus, transfer may include an action with a pending motion for preliminary injunction. *See, e.g., In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, 24 F. Supp. 3d 1361, 1362 (J.P.M.L. 2014).

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PANEL ON MULTIDISTRICT LITIGATION



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**IN RE: MONITRONICS INTERNATIONAL, INC.,
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SCHEDULE A

Southern District of Ohio

LUCAS v. MONITRONICS INTERNATIONAL, INC., ET AL.,
C.A. No. 1:17-00374