

**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:**\* Pursuant to 28 U.S.C. § 1407(c), defendant Alliance Security, Inc. (“Alliance”) moves to transfer the action listed on Schedule A (*Cunningham*) to the Northern District of West Virginia for inclusion in MDL No. 2493. The actions in MDL No. 2493 involve allegations that Monitronics International, Inc. (“Monitronics”), a home security system and alarm monitoring company, violated the TCPA when Monitronics or its alleged agents placed 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, 1366 (J.P.M.L. 2013). The *Cunningham* action alleges that automated calls concerning a home alarm system were placed to plaintiff’s cell phone without his consent, but asserts that Alliance and “John/Jane Doe 1-10” are the responsible parties and does not assert that Monitronics had any relationship to the calls at issue. The Panel invited all parties to address the absence of allegations concerning Monitronics in responding to the transfer motion. Plaintiff in *Cunningham* and one defendant in MDL No. 2493, UTC Fire and Security Americas Corporation (“UTC”), oppose the motion.

In support of its motion to transfer, Alliance argues that *Cunningham* shares questions of fact with the actions in MDL No. 2493, notwithstanding the absence of any allegations concerning Monitronics, because (1) the description of the alleged telemarketing calls in *Cunningham* corresponds to the MDL No. 2493 master complaint allegations describing calls in similar terms; (2) the master complaint alleges that Alliance and Monitronics are jointly liable for Alliance calls based on contractual arrangements that allegedly subject Alliance to Monitronics’ control; (3) plaintiff in *Cunningham* is included in the master complaint’s proposed class definition; and (4) the transferee court issued an order in one action (*Beavers*) holding that common factual allegations concerning Alliance alone are sufficient to support inclusion in MDL No. 2493.<sup>1</sup> Alliance also emphasizes that it already is a defendant in the majority of actions in the MDL. In response, UTC and plaintiff in *Cunningham* contend that the Panel’s initial transfer order limited MDL No. 2493 to actions concerning “Monitronics’ policies and procedures for calling consumers, directly or through their

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

<sup>1</sup> *See Beavers v. Versatile Mktg. Solutions, Inc.*, C.A. No. 14-0064, Order at 2 (N.D. W. Va. May 1, 2014).

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agents” (988 F. Supp. 2d at 1366), and in the absence of any allegations concerning common defendant Monitronics, *Cunningham* should not be included in the MDL.

On this record, we are persuaded that the *Cunningham* shares sufficient questions of fact with the actions in MDL No. 2493 such that transfer is appropriate. Given the master complaint’s particularized allegations that Alliance is subject to Monitronics’ control pursuant to the terms of certain contracts, it is highly likely that discovery in the *Cunningham* action against Alliance will overlap with discovery in MDL No. 2493. This overlap also is reflected in the transferee court’s order granting Alliance’s motion to consolidate the similarly-situated *Beavers* action with the actions in MDL No. 2493. In these circumstances, the limited expansion of the MDL to include an action solely against Alliance is warranted.<sup>2</sup>

Plaintiff’s remaining objections to transfer are unpersuasive. He contends that discovery in his action soon will be complete, his individual action will be delayed by the class-related issues in the MDL, and he will be inconvenienced by a distant forum. The *Cunningham* record demonstrates, however, that very little discovery has taken place, and thus it will benefit from inclusion in coordinated discovery and other common pretrial proceedings. Furthermore, while we are sympathetic to plaintiff’s concerns of delay and inconvenience, they are insufficient to justify denial of transfer. While transfer of a particular action might inconvenience some parties to that action, such transfer is often necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

After considering all argument of counsel, we find that the *Cunningham* action shares questions of fact with actions previously transferred to MDL No. 2493, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Although Monitronics is not named in the complaint, the record before us indicates that the *Cunningham* action 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.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Northern District of West Virginia and, with the consent of that court, assigned to the

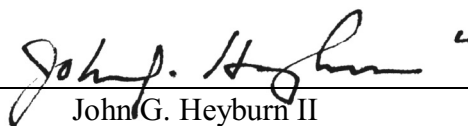
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<sup>2</sup> *See, e.g., In re: Imprelis Herbicide Mktg. Sales Practices and Prods. Liab. Litig.*, MDL No. 2284, Transfer Order, Doc. No. 251, at 1 (J.P.M.L. Dec. 11, 2012) (transferring tag-along action that did not involve the common defendant where the circumstances indicated that “it is almost certain that discovery in the . . . [tag-along] action will overlap with discovery in [the MDL]”); *see also In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 151 F. Supp. 2d 1381, 1382 (J.P.M.L. 2001) (transferring actions that concerned products “different from those included in the [MDL],” based on “common questions of fact with other previously transferred actions” and noting that the transferee court proceedings already had expanded to include the products at issue).

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Honorable Irene M. Keeley for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "John G. Heyburn II", is positioned above a horizontal line.

John G. Heyburn II  
Chairman

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

Charles R. Breyer  
Sarah S. Vance

**IN RE: MONITRONICS INTERNATIONAL, INC.,  
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LITIGATION**

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**SCHEDULE A**

Middle District of Tennessee

CUNNINGHAM v. ALLIANCE SECURITY, ET AL., C.A. No. 3:14-00769