

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AUTO BODY SHOP ANTITRUST LITIGATION

MDL No. 2557

TRANSFER ORDER

Before the Panel: Defendants Oregon Mutual Insurance Company (Oregon Mutual) and Grange Insurance Association (Grange) in the action listed on Schedule A (*Leif*) move under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2557. Defendants California Casualty Insurance Company, Omni Insurance Company, and Sublimity Insurance Company support the motions to vacate. Plaintiff and 41 responding defendants in *Leif*¹ oppose the motions and support transfer.

After considering the argument of counsel, we find that the *Leif* action shares common questions of fact with the actions previously transferred to MDL No. 2557, 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, this action alleges industry-wide conduct involving State Farm and other insurers to suppress the reimbursement rates applicable to automobile collision repair shops. See *In re: Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1389 (J.P.M.L. 2014). *Leif*, like the actions in MDL No. 2557, also includes among its 66 defendants the nation's largest insurance carriers, including common defendants State

¹ Farmers Insurance Company of Oregon, Allstate Fire and Casualty Insurance Company, Allstate Indemnity Company, Allstate Insurance Company, Allstate Property and Casualty Insurance Company, American Family Mutual Insurance Company, American National Property and Casualty Company, Amica Mutual Insurance Company, COUNTRY Casualty Insurance Company, COUNTRY Preferred Insurance Company, COUNTRY Mutual Insurance Company, Esurance Insurance Company, GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company, Liberty Insurance Company, Liberty Mutual Fire Insurance Company, LM General Insurance Company, LM Insurance Corporation, Progressive Advanced Insurance Company, Progressive Casualty Insurance Company, Progressive Classic Insurance Company, Progressive Direct Insurance Company, Progressive Max Insurance Company, Progressive Northern Insurance Company, Progressive Northwestern Insurance Company, Progressive Preferred Insurance Company, Progressive Specialty Insurance Company, Progressive Universal Insurance Company, Progressive West Insurance Company, Safeco Insurance Company of America, Safeco Insurance Company of Oregon, State Farm Fire and Casualty Company, State Farm Mutual Automobile Insurance Company of Oregon, The Travelers Home and Marine Insurance Company, Travelers Commercial Insurance Company, United Services Automobile Association, USAA Casualty Insurance Company, USAA General Indemnity Company, Viking Insurance Company of Wisconsin, and Zurich American Insurance Company of Illinois.

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Farm, Allstate, GEICO, Progressive, Liberty Mutual, Nationwide, USAA, Hartford, Travelers, and Farmers. Thus, transfer will eliminate duplicative discovery, prevent inconsistent rulings on pretrial matters, and conserve the resources of the parties, their counsel and the judiciary.

The objecting defendants argue that transfer is inappropriate principally because (1) they are not involved in any actions in MDL No. 2557; (2) they deny involvement in the alleged anticompetitive practices; (3) they anticipate resolving the *Leif* claims through an early motion for summary judgment; and (4) litigating their individual issues in an industry-wide MDL will be costly and inconvenient. We find these arguments unconvincing. The Panel repeatedly has held that transfer does not require a complete identity of parties where, as here, the actions arise from a common factual core.² The objecting defendants' arguments concerning their lack of involvement in the alleged conduct also are not an appropriate basis for denying transfer. These arguments are directed more to the merits of plaintiff's claims, than to Section 1407's requirement that the subject action share common questions of fact with the MDL actions. Such an assessment of the merits is beyond the Panel's authority.³

Additionally, the objectors' intentions to file motions for summary judgment are no obstacle to transfer, as the Panel often has held that transfer is appropriate when dispositive motions are pending.⁴ Indeed, transfer of actions with imminent dispositive motions is particularly appropriate in this litigation, where the transferee court already has ruled on dispositive motions and thus is familiar with the factual and legal issues likely to be presented.

We are sympathetic to the objectors' concerns about inconvenience, but we are not convinced that they justify excluding *Leif* from the centralized proceedings. The Panel often has held that, while it might inconvenience some parties, transfer of a particular action often is 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). Moreover, the Panel considered similar objections arising from the involvement of regional parties and state-specific issues in the initial transfer order and determined that centralization would lead to the just and efficient resolution

² *See, e.g., In re: Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d at 1390; Transfer Order (*Crawford's Auto Center, Inc.*), at 2 (J.P.M.L. Dec. 12, 2014).

³ *See In re: Anheuser-Busch Beer Labeling Mktg. and Sales Practices Litig.*, 949 F. Supp. 2d 1371, 1371 & n.2 (J.P.M.L. 2013) (“As the Panel held long ago . . . ‘[t]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.’”) (quoting *In re: Kauffman Mut. Fund Actions*, 337 F. Supp. 1337, 1339-40 (J.P.M.L.1972)).

⁴ *See In re: Protegrity Corp. and Protegrity USA, Inc., Patent Litig.*, — F. Supp. 3d —, 2015 WL 506373, at *1 (J.P.M.L. Feb. 6, 2015) (rejecting the argument that “efficiency will not be served by centralization, given the pendency of certain dispositive motions,” explaining that transfer will “eliminate the potential for inconsistent rulings”).

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of all actions, to the overall benefit of the parties and the judiciary. *See In re: Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d at 1390. Since then, the Panel has reached the same conclusion in transferring numerous tag-along actions.⁵ Movants provide no persuasive reason for the Panel to treat *Leif* differently.

Thus, we also deny Grange's request, in the alternative, for simultaneous separation and remand of the claims against it to the District of Oregon. Grange merely repeats the arguments concerning its anticipated dispositive motion, which we already have rejected. We also deny Grange's request to instruct the transferee court on the scheduling of Grange's motion. *See In re: Tylenol (Acetaminophen) Mktg., Sales Practices and Prods. Liab. Litig.*, 936 F. Supp. 2d 1379, 1380 n.3 (J.P.M.L. 2013) ("We leave to the discretion of the transferee judge all issues related to the conduct of the pretrial proceedings").

IT IS THEREFORE ORDERED that this action is transferred to the Middle District of Florida and, with the consent of that court, assigned to the Honorable Gregory A. Presnell for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that Grange's request for separation and remand of certain claims in *Leif* is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

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

Charles R. Breyer
Ellen Segal Huvelle
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⁵ *See, e.g.*, Transfer Order (*Concord Auto Body*), at 1-2 (J.P.M.L. Feb. 6, 2015); Transfer Order (*State of Louisiana*), at 1 (J.P.M.L. Dec. 12, 2014).

IN RE: AUTO BODY SHOP ANTITRUST LITIGATION

MDL No. 2557

SCHEDULE A

District of Oregon

LEIF'S AUTO COLLISION CENTERS, LLC v. STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY OF OREGON, ET AL.,
C.A. No. 3:14-01777