UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: CONVERGENT OUTSOURCING, INC., FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) LITIGATION

MDL No. 2601

ORDER DENYING MOTION FOR RECONSIDERATION

Before the Panel: Defendant Convergent Outsourcing, Inc. (Convergent) moves the Panel to reconsider our order of February 5, 2015, which denied Convergent's motion under 28 U.S.C. § 1407 to centralize pretrial proceedings in this litigation in the Southern District of Texas. Plaintiffs in this litigation generally allege that Convergent sent them letters seeking to settle years-old consumer debts without disclosing that the applicable statute of limitations barred litigation to collect the debts. Plaintiffs assert that this failure to disclose violates the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq*.

Convergent primarily argues that reconsideration is warranted because of the filing of five new actions against it—three in the District of New Jersey and one each in the Eastern District of Michigan and the Eastern District of New York. Plaintiff in the *McMahon* action pending in the Northern District of Illinois supports Convergent's motion. McMahon argues that discovery and pretrial practice in these matters will be more complex than suggested in our prior order and that informal coordination of these actions pending in multiple district courts will be unworkable.

After considering the argument of counsel, we deny the motion for reconsideration. Absent a significant change in circumstances, the Panel only rarely will reach a different result upon reconsideration. *See In re Fresh Dairy Prods. Antitrust Litig. (No. II)*, 959 F. Supp. 2d 1361, 1362-63 (J.P.M.L. 2013). Convergent has not demonstrated that such a change has occurred in this litigation. Indeed, its argument is significantly undercut by the fact that two of the recently-filed actions[1] upon which its motion rests are not related to the subject matter of this litigation—letters seeking to settle time-barred consumer debts. Rather, these two actions involve allegations that Convergent violated the FDCPA when it charged a convenience fee to consumers who used Convergent's website to pay off a debt with a credit card. Convergent also fails to address the dismissal of three of the actions initially listed on its centralization motion or noticed as related to that action based upon settlements between the parties.[2] Taking these into account, there are no more

[1] *Jerusha Reyes v. Convergent Outsourcing, Inc.*, C.A. No. 1:15-01028 (E.D.N.Y.), and *Joseph Luther v. Convergent Outsourcing, Inc.*, C.A. No. 2:15-10902 (E.D. Mich.).

[2] *See Daryl Aldrich v. Convergent Outsourcing, Inc.*, C.A. No. 7:14-03456 (D.S.C.); *Amy*

(continued...)

related actions pending now than when the Panel denied Convergent's motion for centralization. Furthermore, the three recently filed related actions that Convergent identifies do not create a significant overlap among the putative classes asserted in this litigation beyond what was noted in our prior order.[3]

Convergent also argues that the amendment of one of the newly-filed actions to limit the putative class to New Jersey residents (the initial complaint asserted a putative nationwide class) itself is a reason for reconsideration and demonstrates that plaintiffs are engaging in evasive tactics to avoid centralization. This argument would be stronger if plaintiffs in five of the six actions listed on the original motion for centralization had not supported Convergent's motion. Nor does this amendment in any way undermine the central conclusion of our prior order—that while these actions share some factual questions arising from allegations that Convergent sent plaintiffs a dunning letter seeking to collect a consumer debt without revealing that the applicable statute of limitations had expired, these common questions are not sufficiently complex or numerous to warrant centralization. Neither Convergent nor McMahon has convinced us that this determination was incorrect. As we noted in our prior order, there is no dispute regarding the content of these letters, only whether the failure to state that litigation to collect the debts was time-barred renders them misleading under the FDCPA.[4]

McMahon's contention that voluntary cooperation and coordination among the parties and the involved courts is not feasible also is not persuasive. First, such alternatives to centralization are only necessary to the extent there is any possibility for duplicative discovery or inconsistent pretrial rulings. Second, as we observed in our prior order, the various actions against other debt collection companies and debt purchasers pending in several districts in the Seventh Circuit—which McMahon relies upon to support centralization in the Northern District of Illinois—have been proceeding without centralization and without apparent coordination issues for several years and are now nearing

---

[2](...continued)
E. Ehrlich v. Convergent Outsourcing, Inc., et al., C.A. No. 1:14-3804 (N.D. Ga.); and *Goldie Taylor v. Convergent Outsourcing, Inc.*, C.A. No. 3:14-00846 (W.D. Ky.).

[3] The only arguable overlap between the various putative state classes involves two actions pending in the Southern District of Texas (filed by the same plaintiff), two actions pending in adjacent districts in California, and the two newly-filed actions in the District of New Jersey (one of which asserts FDCPA claims on behalf of a putative class of New Jersey residents, while the other asserts an FDCPA claim on behalf of an individual plaintiff).

[4] McMahon quotes extensively from *Buchanan v. Northland Group Inc.*, 776 F.3d 393, 398 (6th Cir. 2015), for the proposition that consumer survey evidence may be necessary in some jurisdictions to demonstrate the alleged misleading nature of the subject letters. This, however, is not a factor of which the Panel was unaware when it denied centralization of this litigation. That some discovery beyond the pleadings—even expert discovery—may be necessary is not, alone, a sufficient basis for centralization.

the conclusion of pretrial proceedings. We continue to see no reason why the actions subject to Convergent's motion cannot similarly progress in the absence of centralization. Finally, neither McMahon nor Convergent has demonstrated that attempts at necessary coordination or cooperation have proven unworkable.

In short, all of the reasons we relied upon in our prior decision to deny centralization remain. Accordingly, reconsideration of that decision is unwarranted. *Cf. In re OxyElite Pro & Jack3d Prods. Liab. Litig. (No. II)*, __ F. Supp. 3d __, 2014 WL 7006967, at *1 (J.P.M.L. Dec. 12, 2014) (denying centralization in absence of significant change in the posture of the litigation).

IT IS THEREFORE ORDERED that Convergent's motion for reconsideration is denied.

PANEL ON MULTIDISTRICT LITIGATION

Sarah S. Vance
Chair

Marjorie O. Rendell	Charles R. Breyer
Lewis A. Kaplan	Ellen Segal Huvelle
R. David Proctor	Catherine D. Perry