

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: TD BANK, N.A., DEBIT CARD
OVERDRAFT FEE LITIGATION**

MDL No. 2613

TRANSFER ORDER

Before the Panel:* Plaintiff Shaina Dorsey moves under Panel Rule 7.1 to vacate our order that conditionally transferred the action listed on Schedule A (*Dorsey*) to the District of South Carolina for inclusion in MDL No. 2613. Defendant TD Bank, N.A. opposes the motion.

After considering the argument of counsel, we find that *Dorsey* involves common questions of fact with the actions previously transferred to MDL No. 2613, 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 the litigation. The actions in MDL No. 2613 share factual questions arising from allegations that TD Bank assesses overdraft fees on its customers' checking accounts in a manner that improperly results in maximizing the amount of those fees. *See In re TD Bank, N.A., Debit Card Overdraft Fee Litig.*, 96 F. Supp. 3d 1378, 1379 (J.P.M.L. 2015). Following our initial centralization of this litigation, we transferred a tag-along action to the MDL (*Robinson II*) that, like *Dorsey*, alleges that TD Bank's assessment of a "sustained" overdraft fee—an additional overdraft fee that is charged if the account holder fails to replenish his or her account to a positive level within ten days of initially incurring an overdraft fee—constitutes usury in violation of the National Bank Act. *See* Transfer Order at 1-2, MDL No. 2613 (J.P.M.L. Aug. 7, 2015), ECF No. 69. The usury claim in *Dorsey* is substantially identical to the usury claim in *Robinson II*, which itself was incorporated into the consolidated amended class action complaint in the MDL. Transfer of *Dorsey* to the MDL thus will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

Plaintiff argues that transfer of *Dorsey* is not warranted because the transferee court in December 2015 dismissed the usury claim asserted in the consolidated amended class action complaint filed in the MDL. The dismissal of claims by the transferee court, however, does not limit either the Panel's or the transferee judge's authority under Section 1407. *See In re Merscorp Inc., et al., Real Estate Settlement Procedures Act (RESPA) Litig.*, 560 F. Supp. 2d 1371, 1372 (J.P.M.L. 2008) (transferring actions after transferee court dismissed identical claims in the MDL). Here, the claims pertaining to the initial overdraft fee and the sustained overdraft fee are related and intertwined—the latter fee cannot be imposed, after all, unless an initial overdraft fee has been assessed. The transferee court, in denying a motion to certify its dismissal of the usury claim for interlocutory appeal, likewise concluded that these claims are so related that they should not proceed

* Judge Lewis A. Kaplan took no part in the decision of this matter.

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separately. *See In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, C.A. No. 6:15-mn-02613, 2016 WL 7320864, at *5 (D.S.C. July 18, 2016). The transferee judge, who is familiar with the allegations, issues, parties, and counsel in this docket, is in the best position to determine the effect of her prior order on the claim in *Dorsey*.

Furthermore, transfer will eliminate any possibility of inconsistent pretrial rulings. The putative usury class in *Dorsey* overlaps with the putative usury class in the MDL. The dismissal of that claim remains subject to appeal and, therefore, the potential exists for duplicative discovery and conflicting rulings respecting the legality of TD Bank's sustained overdraft fee policy.

Finally, plaintiff contends that transfer will cause her inconvenience and delay. But, in deciding issues of Section 1407 transfer, the Panel looks to the overall convenience of the parties and witnesses in the litigation as a whole. *See In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012). Here, overall convenience and efficiency will be served by transfer of *Dorsey*.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of South Carolina and, with the consent of that court, assigned to the Honorable Bruce Howe Hendricks for inclusion in the coordinated or consolidated pretrial proceedings in this docket.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

**IN RE: TD BANK, N.A., DEBIT CARD
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MDL No. 2613

SCHEDULE A

District of New Jersey

DORSEY v. TD BANK, N.A., C.A. No. 1:17-00074