

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

In her motion to vacate, plaintiff argues that transfer of *Robinson II* is not warranted because, unlike the actions pending in MDL No. 2613, *Robinson II* involves a usury claim under the National Bank Act. That claim pertains to TD Bank’s assessment of “sustained” overdraft fees—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. According to plaintiff, *Robinson II* thus does not share common questions of fact with the actions in MDL No. 2613, and its inclusion in the MDL would impair the efficient adjudication of the litigation by introducing new legal issues and discovery.

Another action filed by plaintiff (*Robinson I*) was transferred to MDL No. 2613 without opposition. Both *Robinson* actions involve the imposition of overdraft fees on the same checking account. *Robinson I* deals with the initial overdraft fee, which plaintiff alleges was assessed in violation of Federal Reserve Board Regulation E, 12 C.F.R. § 205.17. *Robinson II* addresses the assessment of a sustained overdraft fee on the account ten days later, which plaintiff alleges was assessed in violation of the National Bank Act’s limitation on usury. As both actions involve the same plaintiff, the same defendant, and the same checking account, allowing these actions to proceed in separate venues likely would result in duplication of efforts by the parties and witnesses.

Furthermore, after the close of briefing on this motion, plaintiffs in the transferee court filed a consolidated amended class action complaint. This consolidated complaint asserts the same usury claim under the National Bank Act that *Robinson II* asserts, on behalf of an identical putative nationwide class of TD Bank customers. See Consol. Am. Class Action Compl., ¶¶ 182, 242-56, *In re TD Bank, N.A., Debit Card Overdraft Litigation*, C.A. No. 6:15-mn-02613 (D.S.C. Jun. 19,

* Judge Marjorie O. Rendell took no part in the decision of this matter.

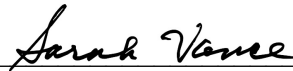
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2015), ECF No. 137. Plaintiff Robinson already is a named plaintiff in this consolidated complaint by virtue of the transfer of *Robinson I*.

Accordingly, after considering the argument of counsel, we find that *Robinson II* 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. There are few, if any, efficiency or convenience benefits to be gained by allowing *Robinson II* to proceed separately from the actions in the MDL. Rather, transfer of *Robinson II* to the MDL will eliminate duplicative discovery and conserve the resources of the parties, their counsel, and the judiciary.

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

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

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

MDL No. 2613

SCHEDULE A

Southern District of Florida

ROBINSON v. TD BANK, N.A., C.A. No. 0:15-60476