

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: ERIE COVID-19 BUSINESS INTERRUPTION
PROTECTION INSURANCE LITIGATION**

MDL No. 2969

TRANSFER ORDER

Before the Panel:* Plaintiff in the action listed on Schedule A (*Udesky*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Udesky* to the Western District of Pennsylvania for inclusion in MDL No. 2969. Defendant Erie Insurance Property & Casualty Company and plaintiffs in eight actions pending in MDL No. 2969 oppose the motion.

In support of its motion to vacate, plaintiff argues that *Udesky* does not share common questions of fact with the actions in the MDL. To the contrary, like plaintiffs in the MDL, plaintiff in *Udesky* alleges that it was insured under a commercial property insurance policy issued by Erie, and that Erie denied plaintiff coverage for business interruption losses allegedly caused by loss of business and governmental closure orders related to the COVID-19 pandemic. That *Udesky* involves certain unique facts, such as the allegations that COVID-19 was present on plaintiff's premises and that plaintiff's policy includes an optometrist-specific endorsement, does not weigh significantly against transfer. Section 1407 does not require a complete identity or even majority of common factual and legal issues as a prerequisite to transfer. *See In re Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010).

Plaintiff also argues that transfer will not enhance the convenience of the parties or the efficiency of the litigation because the witnesses in *Udesky*—including the Erie claims adjustor—are located in the Northern District of Illinois. But this is true of every action in the MDL that originated outside the transferee district. Centralization under Section 1407 is for pretrial proceedings only, and there usually is no need for parties or witnesses to travel to the transferee court for depositions or court hearings. *See In re MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003). In any event, transfer of an action is appropriate if it furthers the expeditious resolution of the litigation taken as a whole, even if some parties to the action might experience inconvenience or delay. *See In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351–52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Finally, plaintiff contends that any common factual questions are legal in nature. As we stated when we created this MDL, centralization may be appropriate even where common

* Judge Catherine D. Perry took no part in the decision of this matter.

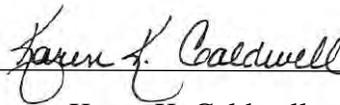
- 2 -

questions of law are prominent, so long as common factual issues are present. *See In re Erie COVID-19 Bus. Interruption Prot. Ins. Litig.*, MDL No. 2969, ___ F. Supp. 3d ___, 2020 WL 7384529, at *3 (J.P.M.L. Dec. 15, 2020). Significant factual questions exist among the Erie actions, including *Udesky*, and centralization will create substantial efficiencies for the parties and the courts.

Therefore, after considering the argument of counsel, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 2969, 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. In our order centralizing this litigation, we held that the Western District of Pennsylvania was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that Erie wrongfully denied policyholders' claims for business interruption protection insurance stemming from the COVID-19 pandemic and the related government orders suspending, or severely curtailing, operations of non-essential businesses. Plaintiffs in this MDL, like plaintiff in *Udesky*, contend that Erie preemptively decided to deny their claims, which are brought under various property insurance policies that, depending on the provisions plaintiff has purchased, provide: (1) business income coverage, (2) civil authority coverage, and (3) extra expense coverage. *See In re Erie COVID-19 Bus. Interruption Prot. Ins. Litig.*, 2020 WL 7384529, at *2.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Western District of Pennsylvania and, with the consent of that court, assigned to the Honorable Mark R. Hornak for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez

**IN RE: ERIE COVID-19 BUSINESS INTERRUPTION
PROTECTION INSURANCE LITIGATION**

MDL No. 2969

SCHEDULE A

Northern District of Illinois

STEVEN A. UDESKY OD AND ASSOCIATES P.C. v. ERIE INSURANCE
PROPERTY & CASUALTY COMPANY, C.A. No. 1:20-04994