UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: BLACKBAUD, INC., CUSTOMER DATA SECURITY BREACH LITIGATION MDL No. 2972

TRANSFER ORDER

Before the Panel:[*] Various parties in the two actions listed on Schedule A have objected to orders conditionally transferring the actions to MDL No. 2972. In *Cohen v. Blackbaud* (W.D. Wash.), defendant President and Fellows of Harvard College ("Harvard") opposes transfer of the claims against Harvard and moves to vacate the conditional transfer order ("CTO"), and for separation and remand, as to those claims. Plaintiff Cohen and defendant Blackbaud, Inc. – the common defendant in the MDL – oppose the motion and support transfer of *Cohen* in its entirety to the MDL. Co-defendant Bank Street College of Education did not oppose the CTO and did not file a response. In *Peterson v. Allina Health System* (D. Minn.), plaintiff Peterson and defendant Allina Health System ("Allina") jointly move to vacate the CTO. The action is pending solely against Allina following plaintiff's recent voluntary dismissal without prejudice of Blackbaud, Inc. ("Blackbaud"). Blackbaud opposes the motion and supports transfer.

The actions in MDL No. 2972 are putative class actions concerning a ransomware attack and data security breach into Blackbaud's systems in early 2020 that allegedly compromised the personal information of consumers doing business with entities served by Blackbaud's cloud software and services. Plaintiffs in the centralized actions allege that the Blackbaud clients impacted by the data breach include numerous schools, universities, healthcare providers, and nonprofit organizations, and that the consumers who provided their personal information to those entities have suffered damages, including the risk of identity theft and fraud. Defendants Harvard and Allina Health System allegedly are two Blackbaud clients affected by the data breach.

I.

In opposing transfer of the claims against Harvard in *Cohen*, Harvard argues principally that (1) common factual issues as to Harvard are absent, especially as it is not a defendant in any of the MDL actions; and (2) its pending motion to dismiss can be resolved most efficiently outside the MDL. These arguments are unpersuasive. The claims against Harvard likely will involve inquiry into the nature and reasonableness of Blackbaud's data security practices to resolve plaintiff's claim that Harvard was negligent in "properly vet[ting]" Blackbaud and "failed to

[*] Judge Catherine D. Perry did not participate in the decision of this matter.

conduct proper and reasonable due diligence over Blackbaud."[1] Additionally, as Harvard acknowledges, the scope of the compromised information is a factual issue in both *Cohen* and the MDL actions – one that is vigorously disputed by the MDL parties. Moreover, as Blackbaud notes, determining the proximate cause of plaintiff's injuries likely will require discovery into the ransomware attack – that is, to determine whether the conduct of Blackbaud, the organizational client, or some other entity is the cause of plaintiff's injuries.[2] Although Harvard is not a defendant in other actions in the MDL, transfer of actions involving non-common parties often is warranted where, as here, the claims arise from a common factual core. *See, e.g., In re Auto Body Shop Antitrust Litig.*, MDL No. 2557, 2015 WL 4747834 (transferring potential tag-along action over defendants' objection that "they are not involved in any actions in [the MDL]," explaining that "the actions arise from a common factual core"). In our judgment, transfer of the *Cohen* action in its entirety, without carving out the claims against Harvard, also best serves the just and efficient conduct of both the *Cohen* action and the actions in the MDL considering that all of plaintiff's claims arise from the same data breach and the putative nationwide class in *Cohen* overlaps with the putative nationwide classes in the MDL.

Harvard's pending motion to dismiss does not weigh against transfer. The Panel routinely transfers actions with pending motions to dismiss, as those motions can be decided by the transferee court. Harvard's argument that resolution of the motion to dismiss will be delayed in the MDL and lead to inefficiencies is speculative. We also note that the transferee judge has stated that she intends to structure the litigation to address dispositive motions raising jurisdictional issues at the outset of the MDL, which are the central issues raised in Harvard's motion to dismiss.

Harvard alternatively requests a stay of any transfer pending a decision on its motion to dismiss by the Western District of Washington court. There is no need to delay transfer.[3] The transferee court is familiar with the issues in this litigation and is well-positioned to rule on the motion to dismiss.

II.

In opposing transfer of *Peterson*, plaintiff Peterson and defendant Allina principally argue that common factual issues are absent, emphasizing that (1) Blackbaud is no longer a defendant in *Peterson*; (2) the gravamen of the single claim asserted against Allina is that Allina is liable under the applicable state law simply by disclosing health records to Blackbaud without plaintiff's consent "even if no ransomware attack had ever occurred"; and (3) Allina is not a defendant in the MDL and thus presents no potential for overlapping discovery. These arguments are unpersuasive. Plaintiff's amended complaint, even though dropping Blackbaud as a defendant, alleges that Blackbaud's conduct contributed to plaintiff's injury. For example, it alleges that "[i]n or around

[1] *See Cohen* First Am. Compl. ¶¶ 56, 57.

[2] Plaintiff alleges that his injuries from the data breach are indivisible – e.g., damages from the exposure and misuse of his private information and the risk of identity theft and fraud.

[3] *See, e.g., In re Proven Networks, LLC, Patent Litig.*, 2021 U.S. Dist. LEXIS 35445, at *4 (J.P.M.L. Feb. 5, 2021) (denying defendant's request to stay transfer pending a ruling on its motion to dismiss; "the transferee court . . . is well-positioned to rule on the motion to dismiss").

May 2020, Blackbaud released . . . patient information to another third party, who used this information for nefarious purposes," and that Blackbaud had an "agency relationship" with Allina and committed the acts at issue in furtherance of that relationship.[4] Additionally, the alleged harm – emotional suffering from the disclosure and "unwanted spam communications" – likely will require a factual inquiry into proximate cause that overlaps with the MDL actions. Thus, despite the assertion that the ransomware attack is not relevant to their claims, plaintiff's claim against Allina will involve a factual inquiry into the Blackbaud data breach. Although Allina is not a defendant in other actions in the MDL, as noted above, transfer of actions involving non-common parties often is warranted where, as here, the claims arise from a common factual core.

Movants' other objections on grounds of inefficiency and convenience do not weigh against transfer. Movants' Panel brief indicates that they contemplate third-party discovery on Blackbaud.[5] Given the complaint's allegations, it seems inevitable that this discovery will relate to the data breach, and thus overlap with discovery on Blackbaud in the MDL. Additionally, in deciding transfer, the Panel looks to the overall convenience of the parties and witnesses in the litigation as a whole. *See, e.g., In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation."). Here, the interests of the parties, witnesses, and overall efficiency are best served by having a single court preside over the common factual issues raised by the data breach.

III.

After considering the argument of counsel, we find that the actions listed on Schedule A involve common questions of fact with the actions transferred to MDL No. 2972, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the District of South Carolina is an appropriate forum for actions concerning the ransomware attack and data security breach of Blackbaud's systems from about February 2020 through May 2020 that allegedly compromised the personal information of millions of consumers doing business with entities served by Blackbaud's cloud software and services. *See In re Blackbaud, Inc., Customer Data Security Breach Litig.*, __ F. Supp. 3d __, 2020 WL 7382276 (J.P.M.L. Dec. 15, 2020). The claims in *Peterson* and *Cohen* arise from the same data breach and involve many of the same factual questions. Transfer will eliminate duplicative discovery, prevent inconsistent rulings on pretrial matters, and conserve the resources of the parties, their counsel, and the judiciary.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of South Carolina and, with the consent of that court, assigned to the Honorable J. Michelle Childs for inclusion in the coordinated or consolidated pretrial proceedings.

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[4] See *Peterson* First Am. Compl. ¶¶ 8, 15.

[5] *See* MDL No. 2972, Reply Br. in support of Joint Mot. to Vacate CTO, Doc. No. 104, at 5 (J.P.M.L. Feb. 2, 2021) ("any fact discovery either Peterson or Allina may eventually seek from Blackbaud would be by subpoena" and would be subject to Rule 45).

PANEL ON MULTIDISTRICT LITIGATION

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IN RE: BLACKBAUD, INC., CUSTOMER DATA SECURITY BREACH LITIGATION MDL No. 2972

SCHEDULE A

District of Minnesota

PETERSON v. ALLINA HEALTH SYSTEM, ET AL., C.A. No. 0:20-02275

Western District of Washington

COHEN v. BLACKBAUD, INC., ET AL., C.A. No. 2:20-01388