UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: CHANGE HEALTHCARE, INC., CUSTOMER DATA SECURITY BREACH LITIGATION MDL No. 3108

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in the four actions listed on Schedule A move under Panel Rule 7.1 to vacate the orders that conditionally transferred their actions to MDL No. 3108. Defendants[1] oppose the motions.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions previously transferred to MDL No. 3108, 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 MDL actions arise from a February 2024 cyberattack on Change Healthcare's network, which exposed the private information of millions of individuals and severely disrupted the ability of physicians, pharmacies, and other healthcare providers to use Change Healthcare's digital platform to access insurance information, fill prescriptions, submit insurance claims, and receive payment for services provided to patients. *See In re Change Healthcare, Inc., Customer Data Sec. Breach Litig.*, 737 F. Supp. 3d 1367 (J.P.M.L. 2024). Plaintiffs in each of these actions allege that they were injured because of the Change Healthcare data breach.

Plaintiffs in the *Morris* action are individuals who allege that their private information was compromised in the February 2024 Change Healthcare data breach. Their claims mirror those of numerous plaintiffs in the MDL, where a track has been established for such claims by individuals, and a consolidated class complaint has been filed on their behalf. Plaintiffs argue that their action was improperly removed from state court and they should be permitted to seek remand to state court before transfer,[2] but we have consistently held that such jurisdictional objections do not

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[*] Judge Dale A. Kimball did not participate in the decision of this matter.

[1] Change Healthcare, Inc.; Change Healthcare Practice Management Solutions, Inc.; Change Healthcare Technologies, LLC; Change Healthcare Solutions, LLC; Change Healthcare Payer Payment Integrity, LLC; Change Healthcare Operations, LLC; Change Healthcare Technology Enabled Services, LLC; and Change Healthcare Resources, LLC.

[2] Plaintiffs' motion for remand was denied without prejudice on February 12, 2025. Their subsequent motion to reopen the case and for leave to renew their motion for remand was denied after the action was stayed pending the Panel's ruling.

present an impediment to transfer. *See, e.g., In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) ("[R]emand motions can be presented to and decided by the transferee judge.").

The *Morris* plaintiffs further argue that their action presents unique questions of fact and that their claim under Florida consumer protection law should be decided by a Florida court. These arguments are not persuasive. Plaintiffs' factual allegations are substantially identical to those of other individual plaintiffs in the MDL, and the individual plaintiffs' consolidated complaint filed at the direction of the transferee court asserts claims for violation of nine state data breach notification statutes similar to plaintiffs' claim under the Florida statute.[3] Transferee courts routinely interpret and apply the laws of multiple states. *See In re BPS Direct, LLC, and Cabela's, LLC, Wiretapping Litig.*, 677 F. Supp. 3d 1363, 1364-65 (J.P.M.L. 2023) ("We routinely have centralized actions asserting similar claims under different state statutes where they involve common questions of fact.").

Finally, the *Morris* plaintiffs argue that—particularly because of their status as *pro se* litigants—transfer would be inconvenient and cause hardship. We recently rejected similar convenience arguments in transferring another individual *pro se* plaintiff's action to the MDL. *See* Transfer Order in *Sifuentes v. Change Healthcare,* W.D. Michigan, C.A. No. 1:24-00850, MDL No. 3108 (Dec. 11, 2024), ECF No. 233. As we noted in the *Sifuentes* order:

> "[A]s 'Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise.' *In re Cygnus Telecomm'ns Tech., LLC, Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001). In any event, in determining whether transfer is appropriate, we look to 'the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.' *In re Watson Fentanyl Patch Prods. Liab. Litig*., 883 F. Supp. 2d 1350, 1351–52 (J.P.M.L. 2012)."

Sifuentes Order at 2. Transfer of the *Morris* action is warranted for the same reasons.

The Eastern District of Virginia *Peninsula Radiological Associates* action is a healthcare provider action like dozens of other actions in the MDL. Plaintiff alleges that the data breach and the ensuing shutdown of defendants' systems left plaintiff unable to collect payments from insurance companies and patients. Plaintiff argues that the action shares few common questions of fact with the MDL in that defendants' alleged failure to provide contracted-for services to Peninsula began some fifteen months before the cyberattack. Peninsula maintains that significant accounts receivable already had accrued by the time of the data breach, that it began transitioning to a new service provider before the breach, and that it terminated its contract with Change Healthcare only days after the breach. Plaintiff also contends that the agreement governing the Temporary Funding Assistance Program (TFAP) loan it accepted after the breach is an unconscionable contract of adhesion and includes an unfair forum selection clause. It argues that

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[3] *See* Complaint ¶¶ 476-1031, in *Christenson v. United HealthGroup Inc., et al.*, C.A. No. 0:25-cv-00183 (D. Minnesota).

it should be permitted to set off all amounts due to it from defendants against repayment of the loan, whether those amounts resulted from the data breach or were already owed to plaintiff before the breach.

Plaintiff's arguments fail to acknowledge the substantial factual overlap between its action and the MDL cases. While it alleges that substantial sums were already past due before the data breach, it devotes a significant portion of its complaint to allegations regarding the causes and effects of the cyberattack, and to the TFAP program implemented after the attack.[4] These allegations overlap with those in numerous other actions that have been transferred to the MDL and in the healthcare provider consolidated class complaint filed at the transferee court's direction.[5] Indeed, the transferee court recently ruled on plaintiffs' motions for a preliminary injunction to prevent defendants from recouping TFAP loans, for an order establishing when repayment of the loans is due, and for court monitoring of defendants' communications with TFAP loan recipients regarding repayment. Interpretation and enforcement of the TFAP agreements will be at issue in both the *Peninsula* action and the MDL. While the *Peninsula* action—like most, if not all, of the MDL actions—likely will involve some case-specific issues, particularly with respect to damages, we often have observed that "Section 1407 does not require a complete identity or even a majority of common questions of fact to justify transfer, and the presence of additional or differing legal theories is not significant when . . . the actions arise from a common factual core." *In re Air Crash over the S. Indian Ocean on Mar. 8, 2014*, 190 F. Supp. 3d 1358, 1359 (J.P.M.L. 2016).

Turning lastly to the *Blue Cross Blue Shield of Arizona* (*BCBSAZ*) and *Capital District Physicians* actions, these actions are unlike others in the MDL in that they are brought by health insurance companies that contracted with the Change Healthcare defendants for the provision of services largely specific to insurers.[6] Like the healthcare provider plaintiffs in the MDL, however,

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[4] *See Peninsula* Compl. ¶ 44 ("the Change entities' poor cyber security protocols led to a complete shutdown of its payment platform and online network"); *id.* ¶ 45 (defendants "had no viable backup plans or systems in place to combat a predictable crisis"); *id.* ¶ 47 ("[t]he ransomware attack could and should have been prevented if only the Change Entities had 'implement[ed] appropriate safeguards'"). *See also id.* ¶¶ 51-61 (relating to the TFAP).

[5] *See, e.g.,* Compl. ¶¶ 136-145 in *Total Care Dental and Orthodontics v. United HealthGroup Inc., et al.*, C.A. No. 0:25-cv-00179 (D. Minnesota); *id.* ¶ 144 ("Defendants have demanded repayment [of TFAP loans] before payments impacted during the service disruption period have been processed and claims deemed untimely may never be paid or processed"); *id.* ¶¶ 499-514 (asserting breach of contract claim as to TFAP agreements); *id.* page 201 (seeking injunction precluding defendants' further demands for repayment of TFAP loans).

[6] The agreements in *Capital District Physicians* provided for services such as claims processing, check printing, explanation of payment printing, risk adjustment services required by the Affordable Care Act, and the provision of certain claim and enrollment data to the Department of Health and Human Services pursuant to applicable regulations. The *BCBSAZ* plaintiffs allege that their contracts required defendants to provide highly specialized services, including management

(footnote continued . . .)

these insurer plaintiffs allege that, as a result of the Change Healthcare data breach and the ensuing lockdown of defendants' digital platform, their operations were disrupted and they incurred substantial losses. The actions will involve questions of fact that overlap extensively with the MDL, including how the cyberattack occurred, whether defendants failed to take adequate steps to prevent the attack, the impact of the attack on plaintiffs' operations, and the steps taken by defendants after the attack to restore access to data stored on its digital platform. In addition, plaintiffs assert a theory of liability—breach of their contracts with the Change defendants—that is asserted by many MDL plaintiffs. Transfer will allow for coordinated discovery on these common issues.

Plaintiffs raise various arguments opposing transfer. First, they contend that they do not fit within either of the two plaintiff tracks—for individual plaintiffs and healthcare provider plaintiffs—thus far established in the MDL. The *BCBSAZ* plaintiffs state that, aside from plaintiffs in the *Capital District Physicians* action, there are no other payor parties involved in the MDL, and they argue that introducing a new category of plaintiffs will unduly complicate the MDL.[7] But insurer parties are already involved in the MDL. The Middle District of Tennessee *Lemke* action, which was transferred to the MDL in October 2024, names HealthFirst, Inc., as a defendant, seeks certification of a nationwide defendant class of insurance companies that received and rejected untimely claims, and asks that HealthFirst be appointed as the representative of that class. Additional payor actions seem likely.[8] It is not uncommon for MDLs (including data breach MDLs) to involve multiple categories of plaintiffs and/or defendants,[9] and the creation of a third plaintiff track for insurers, if deemed appropriate by the transferee court, should not introduce undue complexity.

Plaintiffs also contend that their action will turn primarily on case-specific issues, such as how Change's conduct violated the specific terms of their contracts and the impact of the breaches

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of Medicare enrollments and membership, risk adjustment services, diagnosis related group audits, and recovery services.

[7] Contending that their interests do not align with those of plaintiffs' leadership in the MDL, the *Capital District Physicians* plaintiffs alternatively request that a third track be established in the MDL for health insurer plaintiffs. This request should be addressed to the transferee court. *See, e.g., In re Valsartan Prods. Liab. Litig.*, 433 F. Supp. 3d 1349, 1352 (J.P.M.L. 2019) ("As with any MDL, the transferee judge may account, at his discretion, for any differences among the actions by using appropriate pretrial devices, such as separate tracks for discovery or motion practice . . . .").

[8] An additional action brought by a health insurer plaintiff already has been noticed as potentially related to the MDL.

[9] *See, e.g.,* MDL Order No. 17, in *In re MOVEit Customer Data Sec. Breach Litig.*, MDL No. 3083, ECF No. 1123 (D. Mass. July 24, 2024) (directing plaintiffs to file up to six consolidated amended complaints, and adopting a "bellwether structure [to provide] the best opportunity to expeditiously consider various legal issues and factual scenarios").

on plaintiffs' unique operations. The *BCBSAZ* plaintiffs also maintain that discovery in their action will not focus on the circumstances of the data breach because most facts relating to the breach are matters of "public information." These arguments are not convincing. As defendants observe, it may be undisputed that the cyberattack occurred, but the circumstances, causes, and impacts of the attack are hotly disputed, as is the extent of Change's liability. Plaintiffs in both actions—like many MDL plaintiffs—allege that their contracts required that Change protect confidential information and implement reasonable security safeguards, and that defendants breached those contractual obligations. As noted above, the presence of some case-specific facts is not an impediment to transfer, given the common factual core and the efficiencies and conveniences that transfer will provide for the litigation as a whole.

Finally, plaintiffs argue that transfer is not needed to avoid the risk of inconsistent pretrial rulings because their actions will not involve class certification issues and will primarily require rulings regarding unique issues of contract interpretation and damages. They contend that issues specific to the class actions in the MDL will take precedence, and that transfer will cause inconvenience and delay. There remains a substantial risk, however, of inconsistent pretrial rulings regarding, for example, discovery and expert issues, and transfer "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 Aqueous Film-Forming Foams Prods. Liab. Litig.*, 669 F. Supp. 3d 1375, 1380 (J.P.M.L. 2023).

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Minnesota and, with the consent of that court, assigned to the Honorable Donovan W. Frank for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Karen K. Caldwell
Chair

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IN RE: CHANGE HEALTHCARE, INC., CUSTOMER DATA SECURITY BREACH LITIGATION MDL No. 3108

SCHEDULE A

District of Arizona

BLUE CROSS AND BLUE SHIELD OF ARIZONA INCORPORATED, ET AL. v. CHANGE HEALTHCARE PRACTICE MANAGEMENT SOLUTIONS INCORPORATED, ET AL., C.A. No. 2:25-00550

Middle District of Florida

MORRIS, ET AL. v. CHANGE HEALTHCARE, C.A. No. 6:25-00208

Northern District of New York

CAPITAL DISTRICT PHYSICIANS' HEALTH PLAN, INC., ET AL. v. CHANGE HEALTHCARE TECHNOLOGIES LLC, ET AL., C.A. No. 1:25-00233

Eastern District of Virginia

PENINSULA RADIOLOGICAL ASSOCIATES, LTD. v. CHANGE HEALTHCARE, INC., ET AL., C.A. No. 3:25-00170