

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: PERRY JOHNSON & ASSOCIATES MEDICAL
TRANSCRIPTION DATA SECURITY BREACH LITIGATION

MDL No. 3096

TRANSFER ORDER

Before the Panel:* Plaintiff in the *Andersen* action listed on Schedule A, who is proceeding *pro se*, moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Andersen* to the Eastern District of New York for inclusion in MDL No. 3096. Defendants Perry Johnson & Associates, Inc. (PJ&A), Northwell Health, Inc., Michael J. Dowling, Joseph M. Schulman, John Kane, Greg Radinsky, Kimberly White, and Eric Sandhusen oppose the motion.

Before addressing plaintiff's arguments against transfer, however, we first consider a motion by the MDL lead plaintiffs' counsel to strike plaintiff's reply brief. Federal Rule of Civil Procedure 12(f) permits courts to "strike from a pleading . . . any immaterial, impertinent, or scandalous matter." Plaintiff argues that class counsel is composed of "Jewish Democrats" who cannot be trusted to aggressively litigate against Northwell Health, which was founded "under Jewish auspices, led almost entirely by male Democrats." These arguments, based on nothing more than rank speculation of religious bias, are neither persuasive nor appropriate for a pleading filed in federal court. Accordingly, the motion to strike is granted, and plaintiff's reply brief will be stricken in full.

Turning to plaintiff's motion to vacate, she argues that *Andersen* involves unique factual questions arising from an involuntary admission to a Northwell Health medical facility in 2011, which has been the subject of litigation since that time. In addition to these unique allegations, plaintiff also alleges that her protected health information (PHI) and personal identifying information (PII) were compromised by the same 2023 data security breach of PJ&A's computer network that lies at the heart of the MDL. The data breach claims form the core of plaintiff's complaint—in fact, every cause of action asserted in the complaint centers on the data breach. Transfer under Section 1407 "does not require a complete identity of factual issues, and the presence of additional facts or differing legal theories is not significant when, as here, the actions arise from a common factual core." *In re FTX Cryptocurrency Exch. Collapse Litig.*, MDL No. 3076, 2024 WL 1636729, at *1 (J.P.M.L. Apr. 15, 2024). That *Andersen* involves unique facts, legal theories, and even defendants does not weigh significantly against transfer.

* Judge Karen K. Caldwell did not participate in the decision of this matter.

- 2 -

Plaintiff's arguments that she would be prejudiced by transfer likewise are unpersuasive. To the extent that plaintiff objects to class counsel, she misunderstands the import of transfer under 28 U.S.C. § 1407. "Cases consolidated for MDL pretrial proceedings ordinarily retain their separate identities." *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413 (2015). Transfer has no impact on whether plaintiff falls within the putative classes asserted in the MDL relating to the data breach or whether plaintiff may choose to opt out of any class. Indeed, we regularly centralize individual actions with class actions where they share common factual questions and will benefit from coordinated or consolidated pretrial proceedings. *See, e.g., In re Zantac (Ranitidine) Prods. Liab. Litig.*, 437 F. Supp. 3d 1368, 1369–70 (J.P.M.L. 2020) (centralizing individual personal injury actions with putative economic loss class actions). Thus, plaintiff's arguments that her claims do not fit within the classes asserted in the MDL and that class counsel in the MDL cannot fairly and adequately represent her and similar plaintiffs are not relevant in this context. As we stated in our initial transfer order, centralization of these data breach actions offers "substantial opportunities to streamline pretrial proceedings, reduce duplicative discovery, and conserve the resources of the parties, their counsel, and the judiciary." *In re Perry Johnson & Assocs. Med. Transcription Data Sec. Breach Litig.*, MDL No. 3096, ___ F. Supp. 3d ___, 2024 WL 436485, at *2 (J.P.M.L. Jan. 30, 2024).

Plaintiff further argues that transfer would be unjust because she is proceeding *pro se* and has not been "treated fairly" in other cases litigated in the Eastern District of New York, but we regularly transfer actions brought by *pro se* plaintiffs to MDLs. Such plaintiffs generally benefit from the efforts of lead counsel to advance the litigation and the extensive discovery (both factual and expert) undertaken in the centralized proceeding. Plaintiff's complaints about the transferee district are not well taken. "The prospect of an unfavorable ruling by the transferee court or the possibility that another district judge may be more favorably disposed to a litigant's contentions are simply not factors considered by the Panel in determining whether and to where transfer under Section 1407 is appropriate." *In re Beef Indus. Antitrust Litig.*, 419 F. Supp. 720, 722 (J.P.M.L. 1976).

We are sympathetic to plaintiff's concerns about the potential inconvenience posed by transfer to the Eastern District of New York, but we are not persuaded that these concerns justify exclusion from the MDL. Centralization 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, Pat. Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003). We also note that the transferee court has already made use of videoconferencing for remote hearings in this litigation. 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. *See 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.").

Therefore, after considering the parties' arguments, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 3096, and

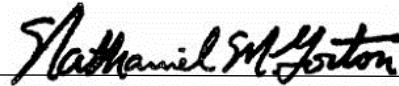
- 3 -

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 Eastern District of New York was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations of a 2023 data security breach of a portion of Perry Johnson's computer network. See *In re Perry Johnson & Assocs.*, 2024 WL 436485, at *1. Similar to the actions in the MDL, plaintiff in *Anderson* alleges that she was the patient of a medical provider that used PJ&A's medical transcription services and whose PHI or PII was potentially compromised by the 2023 data breach.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable Rachel P. Kovner for coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that the MDL lead plaintiffs' counsel's motion to strike plaintiff's reply brief is GRANTED. The reply brief is stricken in its entirety.

PANEL ON MULTIDISTRICT LITIGATION



Nathaniel M. Gorton
Acting Chair

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

David C. Norton
Dale A. Kimball

**IN RE: PERRY JOHNSON & ASSOCIATES MEDICAL
TRANSCRIPTION DATA SECURITY BREACH LITIGATION**

MDL No. 3096

SCHEDULE A

Middle District of North Carolina

ANDERSEN v. PERRY JOHNSON & ASSOCIATES, INC., ET AL.,
C.A. No. 1:24-00277