

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:* Defendants Cook County Health & Hospitals System and Cook County Health (collectively, CCH) move under Panel Rule 7.1 to vacate our order that conditionally transferred the *O’Neill* action listed on Schedule A to the Eastern District of New York for inclusion in MDL No. 3096. Defendant Perry Johnson & Associates, Inc. (Perry Johnson), and the MDL plaintiffs oppose the motion.

CCH argues that unique factual and legal questions in *O’Neill* pertaining to CCH weigh against centralization. But CCH is not the only defendant in *O’Neill*. Perry Johnson is also sued, and the claims against Perry Johnson are substantially similar to the claims in the MDL. Indeed, the claims against both CCH and Perry Johnson arise from the same 2023 data security breach of Perry Johnson’s computer network that lies at the heart of the MDL. Common discovery will include how Perry Johnson’s system was hacked, how and when the breach was identified, what security measures Perry Johnson and other defendants had in place to protect customers’ protected health information (PHI) and personal identifying information (PII), and what steps defendants took after discovering the 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). Any unique facts and legal theories as to CCH do not weigh significantly against transfer.

CCH also argues that transfer will not enhance efficiency or the convenience of the parties because (1) *O’Neill* is the only federal action in which CCH is a named defendant, (2) CCH will seek dismissal or stay of *O’Neill* under the first-to-file rule in favor of an Illinois state court proceeding, and (3) transfer would delay adjudication of this motion. CCH advanced a similar argument in opposition to inclusion in the MDL when we first centralized this litigation, *see 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), and we find this argument no more

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

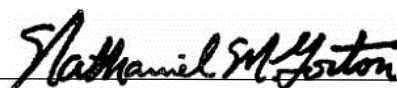
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persuasive now.¹ As we stated in that order, CCH can present its first-to-file argument to the transferee judge. *Id.* In any event, transfer is appropriate if, as here, it furthers the expeditious resolution of the litigation taken as a whole, even 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.”).

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 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. Like the actions in the MDL, plaintiffs in *O’Neill* allege that they were patients of a medical provider (CCH) that used Perry Johnson’s medical transcription services and whose PHI or PII were 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.

PANEL ON MULTIDISTRICT LITIGATION



Nathaniel M. Gorton
Acting Chair

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

David C. Norton
Dale A. Kimball

¹ Plaintiffs in *O’Neill* previously filed several actions in the District of Nevada, which advanced substantially identical claims against CCH and Perry Johnson. After these actions were transferred to MDL No. 3096, plaintiffs voluntarily dismissed their Nevada complaints without prejudice and filed a single omnibus complaint in Illinois—purportedly to avoid jurisdictional motion practice with respect to CCH.

**IN RE: PERRY JOHNSON & ASSOCIATES MEDICAL
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SCHEDULE A

Northern District of Illinois

O'NEILL, ET AL. v. PERRY JOHNSON & ASSOCIATES, INC., ET AL.,
C.A. No. 1:24-04963