

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AUTO BODY SHOP ANTITRUST LITIGATION

MDL No. 2557

ORDER DENYING TRANSFER

Before the Panel:* Defendant Progressive Hawaii Insurance Company (Progressive) moves under 28 U.S.C. § 1407(c) to transfer the action listed on Schedule A (*Price*) to the Middle District of Florida for inclusion in MDL No. 2557. Plaintiff opposes the motion.

After considering the argument of counsel, we deny the motion to transfer. We centralized this litigation, observing that “[a]ll actions share common factual questions relating to the allegation of an industry-wide conspiracy spearheaded by State Farm to suppress the reimbursement rates applicable to automobile collision repair shops, including complex issues concerning the role of ‘direct repair programs’ [DRPs] in furtherance of the alleged scheme.” *See In re: Auto Body Shop Antitrust Litig.*, — F. Supp. 3d —, 2014 WL 3908000 (J.P.M.L. Aug 8, 2014). Since then, we have transferred numerous related actions alleging the same or a substantially similar industry-wide conspiracy.¹

Unlike the actions in MDL No. 2557, *Price* does not allege an anticompetitive conspiracy in the automobile insurance industry, assert wrongdoing by insurers acting in concert with Progressive, or involve common defendant State Farm. Instead, *Price* alleges that Progressive refused to pay for certain collision repair work performed by plaintiff in 2011, that Progressive’s refusals to pay were part of a “broader campaign waged against the Plaintiff’s business” arising from its disagreements with plaintiff’s repair standards and rates, and that Progressive steered customers away from plaintiff in an effort to drive it from the marketplace. Plaintiff’s briefing before the Panel further confirms that *Price* is largely based on the theory that Progressive’s alleged conduct arises from an individualized *animus* against plaintiff, in contrast to an industry-wide scheme or practice. Although Progressive contends that the refusal to pay and steering allegations are similar to the claims against it in MDL No. 2557, the Panel finds those similarities insufficient to justify transfer, given the unique issues raised in *Price* and the absence of a claim of concerted anticompetitive activity among automobile insurers as is alleged in the MDL. *See id.* at *1 (referring to the alleged anticompetitive conspiracy as the “common factual core”).

* Judge Lewis A. Kaplan took no part in the decision of this matter.

¹ *See, e.g.*, Transfer Order at 1-3 (*Crawford’s Auto Center*), MDL No. 2557 (J.P.M.L. Dec. 12, 2014); Transfer Order at 1-2 (*State of Louisiana*), MDL No. 2557 (J.P.M.L. Dec. 12, 2014).

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Moreover, *Price*, which has been pending for over two years, is at a relatively advanced stage. The *Price* court has resolved a motion to dismiss and ruled on numerous discovery disputes, and document discovery appears to be nearing completion. In light of the advanced procedural posture of *Price*, we find that transfer would not serve the convenience of the parties and witnesses or serve the just and efficient conduct of the litigation.

Should the need arise, we encourage the parties to employ alternatives to transfer to minimize the possibility of duplicative discovery and inconsistent pretrial rulings. *See, e.g., In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978); *see also* Manual for Complex Litigation, Fourth, § 20.14 (2004).

IT IS THEREFORE ORDERED that defendant's motion to transfer the *Price* action is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

IN RE: AUTO BODY SHOP ANTITRUST LITIGATION

MDL No. 2557

SCHEDULE A

Middle District of Tennessee

PRICE'S COLLISION CENTER, LLC v. PROGRESSIVE HAWAII INSURANCE
CORPORATION, C.A. No. 3:12-00873