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District of Massachusetts

By:   
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Date: 03/14/2024

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: MOVEIT CUSTOMER DATA  
SECURITY BREACH LITIGATION

MDL No. 3083

TRANSFER ORDER

**Before the Panel:**\* Plaintiff in the Western District of New York *Fiacco* action, defendant Sovos Compliance, LLC, in the Northern District of Illinois *Gorman* action, and defendant Primis Bank in the Eastern District of Virginia *Kline* action move under Panel Rule 7.1 to vacate the Panel's orders conditionally transferring their respective actions, which are listed on the attached Schedule A, to MDL No. 3083. Principal MDL defendant Progress Software Corporation (Progress) opposes all three motions to vacate. Defendant Midland States Bank in the Northern District of Illinois *Gorman* action supports the motion to vacate in that action, while plaintiff in *Gorman* opposes the motion. Defendant University of Rochester and MDL plaintiffs who sue the University,<sup>1</sup> as well as Progress subsidiary Ipswitch, Inc., oppose the motion to vacate with respect to the *Fiacco* action. Plaintiff in *Kline* opposes the motion to vacate as to *Kline*.

After considering the arguments of counsel, we find that these actions involve common questions of fact with the actions previously transferred to MDL No. 3083, 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. In our order directing centralization, we held that the District of Massachusetts was an appropriate Section 1407 forum for actions sharing factual questions concerning allegations that “a vulnerability in Progress Software Company’s MOVEit Transfer and MOVEit Cloud file transfer services was exploited by a Russian cybergang in May 2023, which to date is estimated to have compromised the personally identifying information (PII) of over 55 million people. On May 31, 2023, Progress posted a notice on its website stating it had discovered an SQL injection vulnerability in its MOVEit file transfer services and a related breach in its network and systems. Plaintiffs are individuals whose PII was potentially compromised. They bring largely overlapping putative nationwide or statewide class actions on behalf of persons impacted by the exploitation of the MOVEit software vulnerability.” *In re MOVEit Customer Data Sec. Breach Litig.*, MDL No. 3083, \_\_\_ F. Supp. 3d \_\_\_, 2023 WL 6456749 at \*2 (J.P.M.L. Oct. 4, 2023) (citations omitted). Plaintiffs in the actions now before us were victims of the MOVEit data breach. These actions thus fall within the MDL’s ambit.

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\* One or more Panel members who could be members of the putative classes in this litigation have renounced their participation in these classes and have participated in this decision.

<sup>1</sup> Natasha Benton-Hill and Sabrina Harling.

Defendant Sovos Compliance, LLC (Sovos), a vendor used by Midland States Bank (Midland), opposes transfer because the claims against it and defendant Midland are subject to a putative settlement in a non-MDL case in the District of Massachusetts.<sup>2</sup> But excluding *Gorman*—in which Progress will remain a defendant even if the settlement extinguishes the claims against Sovos and Midland—is inconsistent with our approach taken in this docket whereby all factually related actions involving the MOVEit breach are transferred, regardless of defendant.<sup>3</sup>

Plaintiff opposing transfer of the Western District of New York *Fiacco* action argues that he only brings claims against the University of Rochester. But the MDL already contains actions with claims against the University of Rochester. In fact, *Fiacco* was consolidated in the Western District of New York with two other actions, both of which were transferred to the MDL. Plaintiff urges that his claims are focused exclusively on the University’s conduct, but his complaint says otherwise. Plaintiff alleges the University’s disclosure of his PII to Progress violated its duty to maintain adequate security measures over its networks and systems. He alleges that the University “was in a position to ensure that its vendors’ [i.e., Progress Software’s] systems were sufficient to protect against the harm to Plaintiff and the members of the Class from the Data Breach.” *Fiacco* Compl. ¶ 67. A central issue presented by the *Fiacco* complaint is thus whether Progress maintained adequate security.<sup>4</sup> Transfer of *Fiacco* is warranted in light of the substantial factual overlap with the MDL actions.<sup>5</sup>

Defendant Primis Bank opposes transfer by arguing that the transferor court should rule on its motion to dismiss in the Eastern District of Virginia *Kline* action, which purportedly addresses unique issues of Virginia law. Plaintiff’s complaint, however, quotes the data breach notice stating that the breach occurred through a vulnerability in Progress’s software. *Kline* Compl. ¶ 31. Further, plaintiff alleges that defendant could have prevented the breach, *inter alia*, “by exercising

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<sup>2</sup> See *Stadnik v. Sovos Compliance, LLC*, C.A. No. 1:23-12100, ECF No. 25 (D. Mass). Even if the *Stadnik* action proceeds to finalization of the settlement before a District of Massachusetts judge other than the transferee judge, transfer of *Gorman* to the MDL remains appropriate because of the remaining claims plaintiff brings against Progress.

<sup>3</sup> In our order centralizing this litigation, we created a single, multi-defendant docket including all actions involving the MOVEit data breach—regardless of defendant named in each action—because of the “interconnectedness among defendants” and several defendants’ assertions that they may “bring third party claims against PBI and Progress in cases in which the plaintiffs have not named them.” See *In re MOVEit*, MDL No. 3083, 2023 WL 6456749 at \*2.

<sup>4</sup> See *id.* ¶ 3 (alleging that it was the “vulnerability in [the] MOVEit File Transfer Solution, [which was] used by” Rochester which led to the disclosure of *Fiacco*’s PII); *id.* ¶ 25 (alleging that it was Rochester’s “disclosure” of *Fiacco*’s information to “a third-party,” which used the MOVEit software, that caused the complained-of conduct).

<sup>5</sup> See also *In re ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu.”).

due diligence in selecting its IT vendors and properly auditing those vendor's security practices." *Id.* at ¶ 41. Even if defendants are correct that the action raises unique issues of Virginia law, "[t]he presence of differing legal theories is outweighed when the underlying actions, such as the actions here, arise from a common factual core." *See In re M3Power Razor Sys. Mktg. & Sales Practices Litig.*, 398 F. Supp. 2d 1363, 1364 (J.P.M.L. 2005). Given the likely need of discovery from Progress and transferor court's ability to decide the motion to dismiss, transfer is appropriate.

IT IS THEREFORE ORDERED that these actions are transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable Allison D. Burroughs for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Chair

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David C. Norton  
Dale A. Kimball

Matthew F. Kennelly  
Roger T. Benitez  
Madeline Cox Arleo

**IN RE: MOVEIT CUSTOMER DATA  
SECURITY BREACH LITIGATION**

MDL No. 3083

**SCHEDULE A**

Northern District of Illinois

GORMAN v. PROGRESS SOFTWARE CORPORATION, ET AL.,  
C.A. NO. 3:23-50397

Western District of New York

FIACCO v. UNIVERSITY OF ROCHESTER, C.A. NO. 6:23-06518

Eastern District of Virginia

KLINE v. PRIMIS BANK, C.A. NO. 3:23-00574