

BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

In re: Yosemite Park, Hantavirus Litigation

MDL-

MOTION OF DEFENDANT
UNITED STATES OF AMERICA
FOR TRANSFER OF ACTIONS
TO THE EASTERN DISTRICT OF
CALIFORNIA PURSUANT TO 28
U.S.C. § 1407 FOR
COORDINATED PRETRIAL
PROCEEDINGS

I. INTRODUCTION

Defendant, the United States of America, submits this memorandum in support of its motion for transfer of actions to the Eastern District of California. Currently, plaintiffs in 4 cases have filed complaints against the United States, seeking damages for illness/death allegedly caused by hantavirus contracted as a result of staying in signature tents cabins at Yosemite's Curry Village, during the summer of 2012. Another plaintiff has filed an administrative claim over the same incident, and the National Park Service (NPS) denied that claim on January 13, 2014. The United States expects that claimant to file suit by July 13, 2014, and possibly sooner. In addition, at least 5 other individuals experienced known injuries and/or death allegedly caused by hantavirus contracted in Yosemite, at the same location and in the same time period. Those claims can be filed with the appropriate agency (NPS) within 2 years of the date the claimed accrued. 28 U.S.C. §2401(b).

II. STATEMENT OF THE RELATED CASES

Currently, plaintiffs have filed 4 cases against the United States of America, related to the Yosemite hantavirus incident. Plaintiffs in Mann filed the first case, in the Eastern District of

California. The Garisto plaintiffs filed the second case, in the Middle District of Pennsylvania. Harrison plaintiffs recently filed a third case, in the Northern District of California. The Badani plaintiffs filed the fourth case, in the Northern District of California.

One other plaintiff, Cathy Carrillo, filed an administrative claim with the NPS, and the agency denied the claim on January 13, 2014. We expect that the Carrillo plaintiff will file suit by July 13, 2014. Indeed, Ms. Carrillo previously filed a complaint in superior Court of the State of California for the County of Mariposa (later removed by the parties to Federal District Court), against the NPS' concessionaire Delaware North Companies (DNC). She voluntarily dismissed the case, with the express purpose of filing her SF95 administrative claim against the government. In her filed complaint, Carrillo alleged that the defendants failed to remedy a known risk of hantavirus and failed to warn Plaintiff about the risk.

All 4 currently filed complaints allege common questions of fact. The complaints all allege that the defendants did nothing to prevent the hantavirus; knew there was a risk of hantavirus to patrons of Curry Village, and did nothing to warn patrons either before their stay or after their stay at Yosemite. In addition to the 4 filed complaints and the Carrillo claim, at least 5 other individuals have sustained known injuries and/or deaths alleged to have been caused by Hantavirus at the same location and in the same time frame.

III. SUMMARY OF ARGUMENT

1. The Hantavirus Cases Involve Common Questions of Fact

The Panel may transfer cases to a single judicial district for pretrial coordination or consolidation if: (1) they involve "common questions of fact"; (2) transfer would be convenient for the parties and witnesses; and (3) transfer would "promote the just and efficient conduct" of the cases. 28 U.S.C. § 1407 (a). "The objective of transfer is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost and save the time and effort of the parties, the attorneys, the witnesses and the courts." *Manual for Complex Litigation, Fourth*, § 20.131 (2004). Transfer for coordinated or consolidated pretrial proceedings is appropriate when multiple "civil actions involving one or more common questions of fact are

pending in different districts.” 28 U.S.C. § 1407(a). The relevant question is whether the actions “arise from a common factual core.” *Id.*

Here, all the pending actions involve allegations of exposure to hantavirus during the summer of 2012 while staying at Curry Village in Yosemite. At this time, authorities have found at least ten individuals with known injuries, including 3 and/or deaths allegedly caused by hantavirus contracted while staying at Curry Village. As all the cases challenge the same misconduct by the same defendants “centralization under Section 1407 is necessary to eliminate duplicate discovery, prevent inconsistent pretrial rulings and conserve the resources of the parties, their counsel and conserve the resources of the parties, their counsel and the judiciary.” *In re Cardiac Devices Qui Tam Litigation*, 254 F.Supp.2d 1370, 1372 (J.P.M.L. 2003).

The filed cases, Garisto, Mann, Harrison and Badani involve common questions of fact, including: (a) whether the NPS sufficiently warned visitors of the risk of contracting hantavirus; and (b) whether the NPS was negligent in alerting visitors to a hantavirus outbreak both before and after visits to Yosemite. The Garisto amended complaint contains allegations that the United States through the NPS, failed to maintain Curry Village so as to not pose an unreasonable risk of serious injury; failed to warn patrons of dangerous conditions existing at Curry Village; and failed to timely notify Plaintiff of a hantavirus outbreak at Curry Village. The Mann complaint alleges, among other allegations, that the United States had knowledge of hantavirus outbreaks at the time plaintiff stayed in Curry village and failed to warn plaintiff of the dangerous conditions of Curry Village either before or after their trip. The Harrison complaint contains allegations that prior to Plaintiffs’ stay the defendants were aware of an outbreak of hantavirus and did nothing to correct the problems in Curry Village. The Badani complaint contains allegations that the defendants were aware of the risk of hantavirus and failed to warn Plaintiffs of the risk of hantavirus. The Carrillo claimant and her previously filed complaint alleged that the defendants failed to remedy a known risk of hantavirus and failed to warn Plaintiff about the risk.

The filed cases also contain the same legal questions regarding the duty of the NPS with respect to plaintiffs, Yosemite, Curry Village, and its independent contractor, Co-Defendant, DNC, as well as the applicability of the Federal Tort Claims Act and its exceptions to the conduct of the NPS. While medical issues may vary from case to case, but the underlying questions of fact and law are the same cross all the cases.

2. Transfer Would be Convenient for the Parties and Witnesses

Transferring the hantavirus cases to an MDL in the Eastern District of California would achieve efficiency and provide convenience for the parties and witnesses. Most fact witnesses form a corpus of individuals from the locale surrounding Yosemite Park located in the Eastern District of California. From defendants' perspective, transferring the cases to a single court would be far more convenient than simultaneously litigating the same issues in multiple states such as California and Pennsylvania and in multiple districts. Due to the fact that all the underlying cases are so similar, pretrial coordination of these actions in any single district is more appropriate than allowing the cases to proceed individually. It simply makes sense for one judge to "structure pretrial proceedings to accommodate all parties' legitimate discovery needs while ensuring that the common party and witnesses are not subjected to discovery demands that duplicate activity that will or has occurred in other actions." *In re Method of Processing Ethanol Byproducts and Related Subsystems* (858) Patent Litig., 730 F. Supp. 2d 1379, 1380 (J.P.M.L. 2010). Without centralization, the defendant would be subject to duplicative discovery demands in individual case and its witnesses could potentially have to sit for multiple duplicative depositions. Additionally defendant would be subjected to multiple different district judges' decisions on the timing and scope of discovery, application of jurisdictional defenses, and other important legal and pretrial issues.

Plaintiffs would also benefit from pretrial centralization. Instead of proceeding individually, they can "combine their forces and apportion the workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of inconvenience to all concerned." *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984).

Transfer to a single district would "promote the just and efficient conduct" of the hantavirus cases. 28 U.S.C. § 1407. Transferring the cases would save judicial time and resources. *See AT&T Mobility*, 710 F. Supp. 2d at 1380 ("centralization will save considerable

judicial time,” because “discovery ... will undoubtedly overlap and many of the legal issues will turn on similar facts and law.”) Centralization of this matter will promote judicial economy.

The filed actions have not begun conducting discovery. The Mann action has just completed the pleadings stage and due to the pending MDL motion the parties have stipulated to continue the deadline to file a Joint Scheduling Report until April 29, 2014. The Garisto plaintiff recently filed an amended complaint. Both the Harrison and Badani case were only filed in the last few weeks; indeed, answers are not yet even due. When an opportunity presents itself, as it has here, it makes sense to coordinate these actions from the start, and ensure that all parties can benefit from the MDL. *See United States Judicial Panel on Multidistrict Litigation*, Rules 7.1 and 7.2; *In re Metoprolol Succinate Patent Litig.*, 329 F. Supp.2d 1368, 1370(J.P.M.L. 2004) (“Section 1407 will have the salutary effect of assigning the present actions and any future tag-along actions to a single judge who can formulate a pretrial program that ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties and the courts.”) Co-Defendant, DNC, has agreed to join in this motion for multidistrict litigation.

The Eastern District of California is the proper venue for this centralization. The Eastern District is experienced in Multi District Litigation. The Mann case is already filed in the Eastern District of California. The majority of witnesses will be based in the Yosemite Park region, which is located in the Eastern District, with 4 pending MDLs as of September 2013. *See, e.g., In re: ClassicStar mare Lease Litig.*, 528 F. Supp. 2d 1345, 1347 (J.P.M.L. 2007) (considering the overall convenience of the parties and witnesses). All of the existing claims and future claims are (or will be) alleged to have resulted from time spent in Yosemite, in the Eastern District.

IV. CONCLUSION

For the foregoing reasons, Defendant, the United States of America respectfully requests that the Multi District Panel transfer the hantavirus cases to the United States Court for the Eastern District of California, for coordinated or consolidated pretrial proceedings pursuant to 28

U.S.C. § 1407.

Respectfully Submitted,

RAWLE & HENDERSON, LLP

By: /s/ John J. Snyder
John J. Snyder, Esquire
Attorney I.D. No. 22751
Tara Nalencz, Esquire
Attorney I.D. No. 94064
Mary Ann Capriotti, Esquire
Attorney I.D. No. 86589
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 575-4200