BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL Docket No. 2928

In re: Hotel Industry Sex Trafficking Litigation

DEFENDANT INTER-CONTINENTAL HOTELS CORPORATION'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF OHIO

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Inter-Continental Hotels Corporation ("Inter-Continental") is a company within the InterContinental Hotels Group ("IHG") family of companies. IHG condemns human trafficking in all forms and is committed to working with hotel owners to aggressively combat human trafficking.

Inter-Continental hereby files this Response in Opposition to Plaintiffs' Motion for Transfer of Actions to the Southern District of Ohio (Eastern Division) pursuant to 28 U.S.C. § 1407 and respectfully requests that the Judicial Panel on Multidistrict Litigation ("the Panel") deny the requested transfer. In support, Inter-Continental states as follows:

INTRODUCTION

The Panel should reject movants' request to transfer a small number of cases to the Southern District of Ohio in order to form a new MDL. The cases movants seek to transfer are factually distinct, implicate numerous hotel brands (each with their own unique policies, operating models and procedures), and involve independently-owned and operated franchised hotels.[1] Additionally, given the small number of cases, the parties may still coordinate informally and no transfer is therefore necessary.

Specifically, transfer is not warranted for the following reasons: (1) only a relatively few cases have been filed under the TVPRA (or related state statutes), and movants' promises of potential additional cases cannot be a part of the Panel's consideration; (2) these cases are each entirely distinct and thus individualized issues will inevitably predominate, especially so given the unique allegations applicable to each plaintiff and the different corporate structures, operating models, and policies and procedures of the several hotel brands as well as the particular issues

[1] The primary basis for Movants' lawsuits is the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595(a). It permits a victim of trafficking, as defined by the statute, to bring a private cause of action against any entity that "knowingly benefits" from the trafficking.

involved with the various independently-owned hotel properties; (3) the defendants are competitors, and the Panel has repeatedly been reluctant to order MDL centralization for market-competitors; and (4) viable alternatives to centralization exist, such as informal coordination among the parties.

ARGUMENT

"The Panel considers only two issues in resolving transfer motions under § 1407 in new dockets. First, the Panel considers whether common questions of fact among several pending civil actions exist such that centralization of those actions in a single district will further the convenience of the parties and witnesses and promote the just and efficient conduct of the actions. Second, the Panel considers which federal district and judge are best situated to handle the transferred matters." Hon. John G. Heyburn II, *The Problem of Multidistrict Litigation: A View from the Panel: Part of the Solution*, 82 TUL. L. REV. 2225, 2241 (2008); *see* 28 U.S.C. § 1407(a). The Motion For Transfer should be denied as these cases are well-suited to the kind of formal and informal coordination that the Panel has repeatedly cited as an appropriate alternative to an MDL where, as here, there are so few cases and where there are common counsel on both sides.

I. The Motion for Transfer Should be Denied.

A. Centralization would not serve the convenience of the parties as there are too few actions pending, and the defendants vary from action to action.

Movants seek transfer of only twenty-one actions, each with different combinations of defendants as well as different types of defendants (franchisors, franchisees, hotel management companies, individual defendants, and even Craigslist, Inc.). Inter-Continental, for example, has only been sued in 4 of these actions.[2]

[2] Movants' schedule of cases only lists four cases against Inter-Continental, but on the same day that Movants filed their Motion for Transfer, another TVPRA case was filed against Inter-Continental in the Middle District of Florida. *See C.K. v. Wyndham Hotesls and Resorts, Inc.;*

The Panel has consistently held that an MDL is not appropriate with so few cases and with a lack of consistency in defendants. Indeed, the Panel has been "disinclined to take into account the mere possibility of future filings in [its] centralization calculus." *In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig., 959 F.Supp. 2d 1375, 1376 (J.P.M.L. 2013); see also In re: Ambulatory Pain Pump–Chondrolysis Prods. Liab. Litig*., 709 F.Supp.2d 1375, 1377 (J.P.M.L. 2010) (denying centralization for a second time, despite growth of lawsuits from thirteen to 102 actions, in part, because most defendants were named "in only a minority of actions," with several sued in "but a handful"); *In re: Mirena Ius Levonorgestrel-Related Prod. Liab. Litig*., 38 F. Supp. 3d 1380, 1381 (J.P.M.L 2014) ("Given the few involved counsel and limited number of actions, informal cooperation among the involved attorneys is both practicable and preferable to centralization. . . .The actions before the Panel are well-positioned for informal coordination, as they all are in their infancy with discovery having commenced in a handful of actions only in the last few months . . .).

"[W]here only a few actions are involved, the proponent of centralization bears a heavier burden to demonstrate that centralization is appropriate." *In re: Bernzomatic & Worthington Branded Handheld Torch Prods. Liab. Litig.*, 293 F. Supp. 3d 1380 (J.P.M.L. 2018) (denying motion seeking centralization) (citations omitted). Undoubtedly anticipating this issue, Movants argue that they "have learned that there are 1,500 sex trafficking victims who have retained lawyers to investigate and evaluate their claims against the hotel industry." [Motion, P.1]. The implication

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Marriott International, Inc.; Inter-Continental Hotels Corporation; and Hyatt Hotels Corporation, Case No.: 3:19-cv-01412-MMH-PDB.

is that many more lawsuits are forthcoming. What movants did not say, though, is that plaintiffs' counsel have investigated the claims of these alleged 1500 clients and decided to file suit.[3]

The Panel must consider the present motion based only on the cases ***already*** filed and not on claims of potential lawsuits that have not yet been filed. The Panel's precedent on this is clear: with only a few suits pending, centralization is not appropriate. *See In re: Proton-Pump Inhibitor Prod. Liab. Litig.,* 273 F. Supp. 3d 1360, 1362 (J.P.M.L. 2017) (denying centralization and stating "…although plaintiffs almost guarantee that the number of involved actions will increase by the hundreds if not thousands, the Section 1407 motion presently encompasses just fifteen cases and 24 tag-alongs. The Panel previously has been "disinclined to take into account the mere possibility of future filings in [its] centralization calculus."); *In re: Mirena Ius Levonorgestrel-Related Prod. Liab. Litig*., 38 F. Supp. 3d 1380, 1381 (J.P.M.L 2014) ("Although plaintiffs assert that the number of actions is likely to expand substantially, the mere possibility of additional actions does not convince us that centralization is warranted."); *In re: Intuitive Surgical, Inc., Da Vinci Robotic Surgical Sys. Prods. Liab. Litig*., 883 F.Supp.2d 1339, 1340 (J.P.M.L.2012) (denying centralization and noting that "[w]hile proponents maintain that this litigation may encompass 'hundreds' of cases or 'over a thousand' cases, we are presented with, at most, five actions.").

B. Individualized fact issues will predominate.

Although the number of actions pending before this Panel for potential centralization are few, by contrast, the amount of variation in both the plaintiffs' allegations and among the numerous defendants is great. Recognizing this, the Panel has denied transfer when the "variance in named defendants virtually ensures that a significant amount of the discovery will be defendant-specific, as do the plaintiffs' allegations themselves." *In re: Cordarone (Amiodarone Hydrochloride)*

[3] Of course, Inter-Continental's position on this issue may change if hundreds of additional cases are ultimately filed.

Mktg., Sales Practices & Prods. Liab. Litig., MDL No. 2706, 2016 WL 3101841, at *1 (J.P.M.L. June 2, 2016).

Indeed, here, the nature of Plaintiffs' claims regarding clandestine trafficking allegedly perpetrated by criminals at various hotels around the country necessarily means vastly different discovery channels between the cases. For every Plaintiff, individualized issues will persist including: (1) substantive proof of trafficking – force, fraud, or coercion; (2) extent of any investigation by law enforcement; (3) any potential criminal court proceedings against Plaintiff or her purported trafficker - and any defenses developed with criminal counsel; (4) the absence of control over the day-to-day operations of independently owned and operated hotels by various branded hotel company defendants and the application of state laws on franchisor liability; (5) whether specific defendants knowingly benefitted from or participated in each Plaintiff's alleged trafficking; and (6) the extent of abuse and damages sustained. This Panel has previously denied centralization on similar grounds for a group of human trafficking cases brought by purported victims of forced labor. *See In re: Signal Int'l LLC Human Trafficking Litig.*, 38 F. Supp. 3d 1390, 1391 (J.P.M.L. 2014) (denying centralization, in part, due to individualized fact issues and stating ". . .*each individual plaintiff must prove how he was recruited, the abuse he allegedly suffered while working for [Defendant], and the damages caused to him by the alleged fraudulent scheme and discriminatory work conditions*.") (emphasis added).

The factual distinctions between the cases along with the various hotel brands and hotel operators involved will necessarily mean different inquiries for the multitude of unique parties. As a result, given this great variation of factual issues, no single discovery plan will suffice as "significant localized intervening causation issues are expected to be at play." *In re: Yellow Brass Plumbing Component Prods. Liab. Litig*., 844 F.Supp.2d 1377, 1378-79 (J.P.M.L. 2012). In such

situations, the Panel has often declined industry-wide or class-wide MDL centralization. The same rationale for denying centralization applies here. *See In re: Proton-Pump Inhibitor Prod. Liab. Litig.*, 273 F. Supp. 3d 1360, 1361-62 (J.P.M.L. 2017) ("a significant amount of the discovery in these actions appears to be defendant-specific" and therefore "significantly undermines the efficiency gains to be achieved from centralization"); *In re: Ambulatory Pain Pump–Chondrolysis Prods. Liab. Litig.,* 709 F.Supp.2d 1375, 1377 (J.P.M.L. 2010) (denying centralization because, in part, "individual issues of causation and liability continue to appear to predominate, and remain likely to overwhelm any efficiencies that might be gained by centralization"); *In re: Table Saw Prods. Liab. Litig.*, 641 F.Supp.2d 1384, 1385 (J.P.M.L. 2009) (denying centralization of 42 actions, where "each action ar[ose] from an individual accident that occurred under necessarily unique circumstances"); *In re: Repetitive Stress Injury Prods. Liab. Litig.*, MDL No. 955, 1992 WL 403023, at *1 (J.P.M.L. Nov. 27, 1992) (denying consolidation even though 159 actions were pending because the "degree of common questions of fact among these actions [did not] rise[] to the level that transfer under Section 1407 would best serve the overall convenience of the parties and witnesses and promote the just and efficiency conduct of this entire litigation.").

C. Defendants are market competitors and an MDL would lead to increased inefficiency.

In addition to the problems that come with the individualized issues described above, the various hotel-franchisor defendants are competitors and this poses unique difficulties cutting against centralization. Movants ask the Panel to centralize litigation involving several hotel companies such as IHG, Marriott, Wyndham, G6, Hilton, and Hyatt, including multiple hotel brands within each company. In some cases, the independent hotel owner (franchisee) is named as a defendant. In others, the franchisee is not named but the hotel management company that operates the hotel pursuant to an agreement with the franchisee is named as a defendant. In other

cases, only the franchisor or an affiliate of the franchisor is named. The way a hotel operates is unique to the manager of the hotel and the specific hotel brand involved.

Many of the brand standards, reports and evaluations, marketing strategies, and pricing tools likely to be requested in discovery are considered proprietary among competing hotel brands, complicating efforts at centralized discovery. For these reasons, the Panel "is typically hesitant to centralize litigation against multiple, competing defendants which marketed, manufactured and sold similar products." *In re: Yellow Brass Plumbing Component Prods. Liab. Litig*., 844 F. Supp.2d 1377, 1378-79 (J.P.M.L. 2012).

D. Adequate alternatives to centralization exist.

The Panel also routinely denies transfer and centralization when suitable alternatives exist. In so doing, the Panel reasons that many of the benefits of centralization can instead be achieved through informal coordination between the parties. *See In re: Shoulder Pain Pump-Chondrolysis Prod. Liab. Litig*., 571 F. Supp. 2d 1367, 1368 (J.P.M.L 2008) ("parties can avail themselves of alternatives to Section 1407 transfer to minimize whatever possibilities there might be of duplicative discovery and/or inconsistent pretrial rulings"); *In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig*., 446 F. Supp. 242, 244 (J.P.M.L. 1978) ("We observe that suitable alternatives to Section 1407 transfer are available in order to minimize the possibility of duplicative discovery. For example, notices for a particular deposition could be filed in all actions, thereby making the deposition applicable in each action; the parties could seek to agree upon a stipulation that any discovery relevant to more than one action may be used in all those actions; and any party could seek orders from the three courts directing the parties to coordinate their pretrial efforts.").

Informal coordination is especially warranted here given that many of the defendants have national coordinating counsel and many of the Plaintiffs share representation among just a handful of firms. *See In re: Goodman Mfg. Co., HVAC Prods. Liab. Litig.*, 987 F. Supp. 2d 1380, 1380 (J.P.M.L. 2013) (denying transfer where there was overlapping plaintiffs' counsel in some of the actions and finding that "alternatives to transfer exist[ed]"); *In re: Boehringer Ingelheim Pharms., Inc.*, 763 F. Supp. 2d 1377, 1378 (J.P.M.L. 2011) (when parties share common counsel, "alternatives to formal centralization, such as voluntary cooperation . . . appear viable").

II. If The Panel Finds That Centralization is Appropriate, The Relevant Factors Weigh Against Centralization in The Southern District of Ohio.

The concerns regarding the Southern District of Ohio being selected as a venue for an MDL have been raised and adequately briefed by other Defendants. Inter-Continental Hotels Corporation objects to an MDL being established in the Southern District of Ohio.

CONCLUSION

Where, as here, there are only a few actions pending, "'it is doubtful the transfer would enhance the convenience of parties and witnesses or promote judicial efficiency.'" *In re: Scotch Whiskey*, 299 F. Supp. 543, 544 (J.P.M.L. 1969) (citations omitted). Inter-Continental, therefore, respectfully requests that the Panel deny the Motion to Transfer. Section 1407 "should be the last solution after considered review of all other options." *In re: Gemcap Lending I, LLC, Litig.*, 382 F. Supp. 3d 1352, 1353 (J.P.M.L. 2019) (citing *In re: Best Buy, Co., Inc. Cal. Song-Beverly Credit Card Act Litig.*, 804 F. Supp. 2d 1376, 1378 (J.P.M.L. 2011)). Movants have not demonstrated that "all other options" are not viable and the motion should be denied.

Respectfully submitted this 2nd day of January 2020.

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