

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

IRA A. MORRIS,

Plaintiff,

v.

Civil Action No. 2:15-cv-16023

VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending are Plaintiff's Combined Motion to Reopen Case 2:15-cv-16023 for the Purpose of Hearing a Motion for Sanctions, filed January 5, 2016, and Plaintiff's Combined Motion for Rule 11 Sanctions Against Defendant and Its Counsel, filed January 8, 2016.

Background

In this case, plaintiff Morris presses claims against Volkswagen for reducing the value of his Volkswagen diesel automobile by its "fraud" and "other wrongdoing" in "cheating on the emission levels of its cars." Pl. Compl. at 3. Originally filed in the Circuit Court of Boone County, the case was removed to this forum on December 10, 2015. On December 15, plaintiff filed a motion to remand.

On December 16, 2015, the Panel on Multidistrict Litigation filed, on its own docket, a conditional transfer order. The order stated that this case would be transferred to the United States District Court for the Northern District of California pursuant to the Panel's authority under 28 U.S.C. § 1407 unless one of the parties objected by December 23, 2015. See December 16, 2015 Conditional Transfer Order, Morris v. Volkswagen Group of American, Inc., case no. WVS/2:15-cv-16023. The Panel's personnel have confirmed to the court's clerk that the conditional transfer order, as well as a notification that any objection must be filed by December 23, were sent by email to plaintiff's counsel. It is also noted that the court received in chambers an email reporting the conditional transfer order on December 16, 2015, a copy of which email is ORDERED filed herein.

On December 29, 2015, the Panel transferred the case to the Northern District of California. The panel's order noted that plaintiff had not objected to the transfer within the seven-day period when he was permitted to do so. See Rules of Procedure of the U.S. Judicial Panel on MDL, Rule 7.1(c). On December 30, 2015, the transferee court in California reported that it had docketed the case within its district as number 3:15-cv-06252.

Plaintiff thereafter filed the two pending motions - to reopen the case and for sanctions - on January 5 and 8 of 2016,

respectively. In the motion to reopen, plaintiff states his reason for requesting sanctions, which is that Volkswagen "deliberately removed a case from the Circuit Court of Boone County in which there was a clear, binding stipulation that the Plaintiff was not seeking more than \$75,000,"<sup>1</sup> and in so doing committed "a clear and deliberate violation of Rule 11." Pl. Combined Mot. to Reopen Case at 2 (emphasis in original). After removal, Volkswagen "caused the case to be transferred to the Northern District of California, where it became immersed in a monster case – the exact problem that Plaintiff had properly done everything necessary to avoid." Id. Plaintiff believes these actions were "a well-calculated, deliberate attempt by a surpassingly well-financed and calculating defendant and its lawyers to circumvent the law of removal and federal jurisdiction for [an] improper purpose 'such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.'" Id.

The motion for sanctions expands on this explanation, describing plaintiff's attempt to stipulate that no more than \$75,000 would be sought, and contending that defendant's attempt

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<sup>1</sup> Plaintiff's verified complaint stated that "Damages will not exceed \$75,000 exclusive of interest and costs" and that "Plaintiff stipulates that he will not accept more than \$75,000 in damages, exclusive of interest and costs." Pl. Compl. at 1, 6. See 28 U.S.C. § 1332 ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs . . . .").

to include this case in an MDL is part of a large, intentional pattern of abuse. Pl. Combined Mot. for Rule 11 Sanctions at 5-7 (citing Allan Kanner, *The Problem of Multidistrict Litigation Injunctions*, 4 Class Action Litigation Report 303 (2003)).

Plaintiff's motion to reopen the case requests that "this Honorable Court . . . alter or amend the judgment that closed this case and reopen the above-styled case for the purpose of hearing a motion for sanctions."<sup>2</sup> Pl. Combined Mot. to Reopen Case at 1. Plaintiff stresses that "[t]he actions of Defendant that precipitated Plaintiff's motion for sanctions was an affront to this Court and not to the MDL Court in the Northern District of California." Id. (emphasis in original).

#### Discussion

The dates above clarify that plaintiff filed the two pending motions in January. These motions came after the MDL Panel filed its transfer order on December 29, 2015, which itself followed the expiration of the seven-day window for plaintiff to object to the transfer. Because the MDL Panel's rules explicitly provide a seven-day period during which parties may object to a

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<sup>2</sup> The court notes that, because the case was transferred, no "judgment" was entered in the case. The only "closing" of the case that took place was that necessary to move it from this court's docket to that of the District Court in California.

transfer, it is unlikely that plaintiff may receive any relief from the transfer order without having filed a timely objection. See Rules of Procedure of the U.S. Judicial Panel on MDL, Rule 7.1(c) ("Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the 7-day period.").

Plaintiff's filings are not clear as to what he seeks by moving to "reopen" this case. If plaintiff intends a full-blown reconsideration of the MDL panel's transfer order, so that litigation as to his claims may continue in this district, such relief cannot be granted. This court has no jurisdiction to grant plaintiff's request given that the case had already been transferred and re-docketed at the time plaintiff filed the motion to reopen. "Orders of transfer," like other MDL panel orders, are "effective when . . . filed in the office of the clerk of the district court of the transferee district." 28 U.S.C. § 1407(c). After transfer of a case is effective under § 1407, actions taken by the transferor court are considered ineffective.<sup>3</sup>

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<sup>3</sup> See 17-112 Moore's Federal Practice - Civil § 112.06 (2015) ("A transfer under the multidistrict litigation statute becomes effective when the Panel's order of transfer is filed with the clerk of the transferee court. Thereafter it is generally accepted that the jurisdiction of the transferor court ceases, and the transferee court assumes complete pretrial jurisdiction."); In re FMC Corp. Patent Litig., 422 F. Supp. 1163, 1165 (J.P.M.L. 1976) ("Following a transfer, the transferee judge has all the jurisdiction and powers over pretrial proceedings in the actions transferred to him that the transferor judge would have had in the

More importantly, the transfer order emanated from the MDL panel, not this court, and a motion to reopen the case through a reconsideration of the transfer order would be properly directed to the panel. Cf. Salemy v. Biomet, Inc., No. 3:15-CV-21 RLM, 2015 WL 1268305, at \*1 (N.D. Ind. Mar. 18, 2015) ("Only the Panel has the authority to reconsider its own transfer order; a transferee court has no such authority."); In re Richardson-Merrell, Inc., 588 F. Supp. 1448, 1449 (J.P.M.L. 1984) (order of panel granting motion to reconsider prior transfer order). The MDL rules also permit litigants to move to remand their cases to the transferor court, which may provide a superior remedy at present. See, e.g., Rules of the U.S. Judicial Panel on MDL, Rule 10.3.

Persuasive authority also disfavors awards of sanctions in the present circumstances. It is true that courts may sometimes award sanctions when jurisdiction otherwise no longer exists, such as after a voluntary dismissal by the plaintiff under what is now Rule 41(a)(1)(A)(i). Cooter & Gell v. Hartmarx Corp.,

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absence of transfer."); In re Korean Air Lines Disaster of Sept. 1, 1983, 829 F.2d 1171, 1178 (D.C. Cir. 1987) (D. Ginsburg, J., concurring) ("Rather than confine the transferee judge merely to presiding over the pretrial phase of cases that may be resolved finally in the transferor courts, section 1407(a) transfers jurisdiction over whole cases to the transferee court; upon transfer, the transferor courts retain no jurisdiction whatsoever."); Glasstech, Inc. v. AB Kyro OY, 769 F.2d 1574 (Fed. Cir. 1985) (rejecting appeal on basis that district court lost jurisdiction when case was transferred by MDL panel).

496 U.S. 384 (1990). But the most persuasive voices counsel that, after a transfer under 28 U.S.C. § 1404, the transferring district court is not "authoriz[ed] . . . to impose Rule 11 sanctions for conduct arising out of a case which it lacks jurisdiction over, when such jurisdiction clearly is vested in another court."<sup>4</sup>

Chrysler Credit Corp. v. Country Chrysler, Inc., 928 F.2d 1509, 1522 (10th Cir. 1991);<sup>5</sup> but see Laine v. Morton Thiokol, Inc., 124 F.R.D. 625, 626 (N.D. Ill. 1989) (holding that transfer does not diminish transferor court's right to award sanctions). Our own court of appeals has also stated that "a transferee district court has authority to impose Rule 11 sanctions for sanctionable filings made in the federal transferor court." Anderson v. Wade, 322 F. App'x 270, 272 (4th Cir. 2008). The transferee court's power to sanction for filings in the initial forum ensures that litigants have the right to seek sanctions even if it is not appropriate for the transferor court to award them.

Plaintiff requests sanctions based on defendants' improper removal from state court, but the transferee court,

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<sup>4</sup> Although these authorities arose in the context of 28 U.S.C. § 1404 rather than § 1407, they are persuasive in the present situation because of the statutes' common reference to "transfer" of cases within the federal courts.

<sup>5</sup> The court in Chrysler Credit added a footnote to the text quoted, citing Cooter & Gell and acknowledging that "a district court retains the inherent authority under Rule 11 to sanction unethical conduct practiced before it, even if the court lacks jurisdiction to rule on the merits of the case." 928 F.2d at 1522 n.14.

rather than this court, currently has jurisdiction to rule on plaintiff's motion to remand, which directly evaluates the removal from state court. A decision on a motion for sanctions would likely require the transferee court to take a position as to the underlying motion to remand. None of this suggests that plaintiff lacks a remedy, limited though it may be as a practical matter, if his claims of abuse are meritorious. Plaintiff may, of course, move for sanctions in the transferee court, if he has not done so already. Should the California court remand the case to this district, plaintiff may, upon its return, file a new motion requesting the relief that he currently seeks. The likelihood of return is thought by plaintiff to be miniscule.<sup>6</sup> Be that as it may, this court is nevertheless without jurisdiction to grant the relief now sought by plaintiff.

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<sup>6</sup> For the proposition that very few cases involved in the MDL process ever return to their home districts, plaintiff cites Judge Kozinski's dissent in In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1540 (9th Cir. 1996). That case considered whether MDL transferee courts - which ostensibly deal only with pretrial issues - could transfer MDL cases to themselves for trial at the conclusion of pre-trial proceedings. Although the Ninth Circuit ruled, along with several other circuits at the time, that such transfers were permissible, the Supreme Court reversed the decision. Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998). It is not clear whether the figures lamented by Judge Kozinski still obtain after the Supreme Court's ruling in Lexecon.

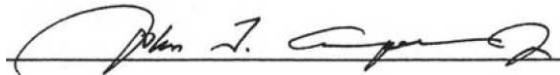


Conclusion

The court accordingly ORDERS that plaintiff's motions to re-open the case, and for sanctions, be, and they hereby are, denied without prejudice.

The Clerk is directed to transmit copies of this order to all counsel of record and any unrepresented parties.

ENTER: August 18, 2016



John T. Copenhaver, Jr.  
United States District Judge