

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE: MEDICAL INFORMATICS)
ENGINEERING, INC., CUSTOMER)
DATA SECURITY BREACH)
LITIGATION (MDL 2667)) CAUSE NO. 3:15-MD-2667
)
)
_____)
This Document Relates to All Cases)
_____)

PRACTICE AND PROCEDURE ORDER UPON TRANSFER
PURSUANT TO 28 U.S.C. § 1407(a)

Consolidation for Pretrial Purposes

By this order, the civil actions that the Judicial Panel on Multidistrict Litigation transferred to this court by its order of December 10, 2015 are consolidated for pretrial purposes, along with related cases that were already pending in this court.

Any **tag-along actions** later filed in, removed or transferred to this court, or directly filed in the Northern District of Indiana will automatically be consolidated with this action without the need for future motions or orders.

This consolidation doesn't constitute a determination that the cases should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he/she/it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

Any orders, including protective orders, previously entered by this court or any transferor district court or state court before removal shall remain in full force and effect, unless I expressly vacate them by a subsequent order.

Initial Case Management Conference

This matter is scheduled for an **initial case management conference** on **January 20, 2016 at 9:30 a.m. (E.S.T.)**, in the third floor courtroom of the Robert A. Grant Federal Courthouse, 204 S. Main Street, South Bend, Indiana.

Unless counsel has received prior authorization, I expect all counsel to appear in person.

I will allow telephonic participation if inclement weather prevents attendance.

Parties aren't expected to attend, but are welcome to do so.

Attendance at the initial case management conference won't waive objections to jurisdiction, venue, or service.

Preparation for Initial Case Management Conference

At the initial case management conference, I will consider suggestions on the content and timing for the initial Case Management Order.

Any party may submit a **proposed draft case management order**. The proposed order should be filed in the Master Docket, 3:15-MD-2667, at least one week before the initial case management conference.

In addition to the usual event deadlines and other issues contained in a pretrial scheduling order, *see* Fed. R. Civ. P. 16, any proposed draft case management order should consider – though needn't specifically discuss – the following:

- electronic discovery;
- whether there is, or likely soon will be, agreement on a document production format that is search-capable;
- any stipulations regarding service of process;
- coordination with state court litigation, if there is any;
- whether a consolidated or master complaint will or should be filed;
- any specific issues related to class action litigation, including likely or potential sub-classes, and when the issue of class certification might be reached;
- appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and its timing, dates for filing a Rule 23 motion and oppositions and replies to that motion, and possible dates for oral argument and/or an evidentiary hearing on the motion;
- the date by which any other parties shall be joined or the pleadings amended;
- dates for the defendant to file responsive pleadings and/or Rule 12 motions;
- which factual or legal issues can be agreed upon or narrowed;

- the anticipated extent and duration of discovery, and any limits that should be placed on discovery;
- a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions;
- whether a protective order is appropriate;
- whether dispositive motions are likely and, if so, dates for filing such motions and/or cross-motions, oppositions, and replies;
- any issues relating to claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert such claims after production – whether to ask me to include their agreement in an order;
- any other matters that the parties believe may be appropriate for inclusion in the Scheduling Order and Case Management Plan;
- trial dates or dates for this court to recommend to the JPML that any unresolved cases be remanded to the transferor courts;
- whether there is a realistic possibility of settling the case without judicial action;
- whether the case might benefit from appointment of a mediator, taking into account the clients' goals in bringing or defending the litigation, whether settlement talks have already occurred (and, if so,

why they didn't produce an agreement), and the point during the litigation when mediation would be most appropriate.

- how the leadership might best be structured for the plaintiffs' counsel.

Pre-Conference Submissions

Before the first pretrial conference, interim lead counsel (a topic discussed later in this order) shall confer and seek consensus to the extent possible with respect to the items on the agenda for the initial pretrial conference, including a **proposed discovery plan and a suggested schedule** under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of any class action allegations, and motions.

Interim lead counsel are also to prepare and submit to my chambers (miller_chambers@innd.uscourts.gov) no later than January 13, 2016 **written statements** of 25 pages or less indicating their preliminary understanding of the agenda for the first pretrial conference, the facts involved in the litigation, and the critical factual and legal issues.

The statements shall list all pending motions and all related cases pending in state or federal court and their current status, to the extent known.

The statements shall also set forth the parties' views on vehicles for settlement discussion.

The parties are limited to one such submission for all plaintiffs and one such submission for all defendants.

These statements **will not be filed with the clerk**, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings.

I encourage the establishment of a structure for mediation so that if and when settlement negotiations become appropriate, unnecessary organizational delay can be prevented.

Stay of Proceedings Pending Case Management Order

This order **stays all outstanding discovery proceedings** in all constituent cases (including related cases filed in the Northern District of Indiana) in this MDL docket; no further discovery is to be initiated until the case management order is entered.

This order also **tolls the time requirements** to perform any act or file any papers under Federal Rules of Civil Procedure 26 through 37, until I set a discovery schedule.

This order doesn't preclude voluntary informal discovery about the identification and location of relevant documents and witnesses, or preclude parties from stipulating to the conduct of a deposition already scheduled, or prevent a party from voluntarily making disclosures or complying with existing

discovery requests, or authorize any party to suspend its efforts in gathering information needed to respond to a discovery request.

All **motions that were pending** in any centralized case at the time of the Panel's December 10 transfer order are **administratively terminated without prejudice** against re-filing after a case management order has been entered.

Until the I have entered a case management order, no motion can be filed under Rule 11, 12, or 56 without leave of the court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the matter without court action.

Attorney Appearance and Admission

No additional appearance in this court is needed from counsel who appeared in a transferor court before transfer, but counsel should review the docket to be sure their appearances have been entered.

I expect all counsel appearing in MDL 2667 to familiarize themselves with all previous orders and proceedings, with this court's Local Rules (www.innd.uscourts.gov/court-info/local-rules-and-orders), with the Standards for Professional Conduct within the Seventh Federal Judicial Circuit (www.ca7.uscourts.gov/Rules/rules.htm), and with the current edition of the MANUAL FOR COMPLEX LITIGATION, FOURTH (2004) to which I will look for general guidance.

Attorneys admitted to practice and in good standing in any United States District Court are admitted to practice in this litigation pursuant to Rule 1.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation.

The pro hac vice requirements of Local Rules 83-5 and 83-7 are waived. Counsel not otherwise admitted to practice in the Northern District of Indiana, but who represent a party in an action included among the cases in this MDL litigation, must complete an Application for Temporary MDL Admission and CM/ECF Registration, which is available on the Northern District of Indiana's website at www.innd.uscourts.gov.

Association of local counsel is not required.

The provisions of this order supersede any inconsistent provisions of this court's Local Rules.

Master Docket; Individual Cases; Filing

The clerk will maintain a master docket case file under the style "In Re: Medical Informatics Engineering, Inc. Customer Data Security Breach Litigation" and the identification "3:15-MD-2667."

All orders, pleadings, motions, and other documents are to bear the same caption as this order.

The caption of a document that applies generally to all consolidated actions is to include the notation that it relates to "ALL CASES," and the clerk will file and docket the document only in the master record, Cause No. 3:15-MD-2667.

A document meant to apply only to a particular case or cases is to be specifically captioned (the primary or first case, if applicable), and all cases to which the document applies shall be listed as “Related Cases” in an appendix to the document, separately tabbed and made easily identifiable to the clerk of this court.

Any document filed in any case in MDL 2667 is to be filed with the clerk of this court and not with the transferor district court.

All filings shall be done electronically using the Case Management/Electronic Case Files (CM/ECF) system, in accordance with the electronic filing policies and procedure manual for the United States District Court for the Northern District of Indiana, which is available at www.innd.uscourts.gov/sites/innd/files/CMECF_UserManual.pdf.

Attorneys not otherwise admitted to practice in the Northern District of Indiana must complete an Application for Special Temporary MDL Admission and CM/ECF Registration and receive a CM/ECF log-in to use the CM/ECF system. The application, registration, and instructions can be found on the court’s website at www.innd.uscourts.gov.

Service through ECF will be considered sufficient with no additional service required, except for new complaints filed and subpoenas issued, which are to be served in accordance with the Federal Rules of Civil Procedure.

Service of all documents not required to be filed with the court shall be sent electronically to liaison counsel for the parties.

Printed courtesy copies aren't to be sent to chambers unless specifically requested.

Lead and Liaison Counsel

Until more permanent appointments can be made, I appoint attorneys Lynn A. Toops, Richard E. Shevitz, Irvin B. Levin, and Vess A. Miller of the Indianapolis law firm of Cohen & Malad to serve as **interim lead counsel**.

I don't believe a separate interim liaison counsel is needed in light of the anticipated brevity of the interim appointment and the comparatively small number of law firms involved to date.

I chose the Cohen & Malad firm for this interim appointment solely because they are counsel of record in the most cases and because they are located in Indiana. Those qualities will have much less weight when I consider applicants for the more permanent lead counsel and liaison counsel appointments.

Because the firm of Lewis Birsbois Bisgaard & Smith LLP has appeared for MIE in each case, I appoint no interim lead counsel for the defense.

I intend to appoint plaintiffs' lead counsel and/or a plaintiffs' steering committee, as well as plaintiffs' liaison counsel, soon after the initial conference.

Applications or recommendations for the positions of lead and liaison counsel must be filed with the court in the Master Docket File not later than **February 3, 2016**.

Applications or recommendations should include each applicant's or nominee's resume or curriculum vitae, educational background, licensing status, a short list of relevant experience with cases in similar areas, and a copy of a certificate of good standing from the highest court from the individuals' jurisdiction.

I will only consider attorneys who have filed a civil action in this litigation.

The main criteria for these appointments will be (1) willingness and ability to commit to a time-consuming process; (2) ability to work professionally, civilly, and cooperatively with others; (3) professional experience in complex litigation; and (4) access to sufficient resources to advance the litigation in a timely manner.

The appointment of lead and liaison counsel, as well as the appointment to any steering committee, shall be for **a term of one year**, subject to reappointment by the court.

Communication with the Court

Unless I order otherwise, all substantive communications with the court are to be **in writing**, with copies to opposing lead counsel or, if liaison counsel has been appointed, to liaison counsel.

Lead counsel or, if liaison counsel has been appointed, liaison counsel are responsible for disseminating information to other counsel as appropriate.

Inquiries about scheduling and status of the case may be made to DeAndra Kirkwood at 574-246-8082 or deandra_kirkwood@innd.uscourts.gov.

Communications Among Counsel

Communication, transmission, or dissemination of information in connection with this case among and between plaintiffs' counsel, or among and between defendant's counsel, will not, by itself, be deemed a waiver of the attorney-client privilege, the protection afforded by the work-product doctrine, the protection afforded to material prepared for litigation, the joint-prosecution or joint-defense privilege, or any other privilege to which a party may be entitled.

Cooperative efforts between the parties and counsel are not in any way to be (1) used against any of the parties, (2) cited as purported evidence of a conspiracy, wrongful action, or wrongful conduct, or (3) communicated to the jury at the trial of any action.

Nothing in this order affects in any way the applicability of any privileges or protection against disclosure otherwise available under law.

I expect that professionalism, courtesy, and civility will endure throughout these proceedings, and communications between counsel will follow the principles of the Standards for Professional Conduct Within the Seventh Federal Judicial Circuit, which are found at <https://www.ca7.uscourts.gov/Rules/rules.htm>

The following principles shall guide all of us – the court and all counsel:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court.

* * *

Counsel need to fulfill their obligations as advocates in a manner that will foster and sustain good working relations among fellow counsel and with the court. They need to communicate constructively and civilly with one another and attempt to resolve disputes informally as often as possible. Even where the stakes are high, counsel should avoid unnecessary contentiousness and limit the controversy to material issues genuinely in dispute.

MANUAL FOR COMPLEX LITIGATION, FOURTH, § 10.21 (2004).

Preservation

All parties are to take reasonable steps to preserve documents and other records (including electronic documents) containing information potentially relevant to the subject matter of this litigation.

Duration and Reach of This Order

Until a comprehensive case management order governing all further pretrial proceedings in this docket is entered, this order's provisions will govern the practice and procedure in all actions the Judicial Panel on Multidistrict Litigation transferred to this court pursuant to its Order of December 10, 2015, to all related cases already pending in the Northern District of Indiana, and to any tag-along actions later filed in, removed to, or transferred to this MDL court under Rule 7.4 of the Rules of the Judicial Panel on Multidistrict Litigation.

SO ORDERED.

ENTERED: December 17, 2015

/s/ Robert L. Miller, Jr.
Robert L. Miller, Jr., Judge
United States District Court