

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: OPPENHEIMER ROCHESTER FUNDS
GROUP SECURITIES LITIGATION**

MDL No. 2063

ORDER DENYING REMAND

Before the Panel:* Defendants in the four actions listed on Schedule A, which previously were transferred from the Northern District of California to the District of Colorado for inclusion in MDL No. 2063, move under Panel Rule 10.3 for an order remanding the actions to the Northern District of California. In the course of pretrial proceedings, the four actions were consolidated as the California Fund action, and a consolidated class complaint was filed by the lead plaintiff (Stockwell). The lead plaintiff opposes the motion for remand.

After considering the argument of counsel, we conclude that remand is not appropriate at this time, and therefore deny defendants' motion. In considering the question of Section 1407 remand, we accord great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, given that he or she has supervised the day-to-day pretrial proceedings in the MDL. *See In re: Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977). A transferee judge's suggestion of remand to the Panel, *see* Panel Rule 10.1(b), indicates that the judge perceives his or her role under Section 1407 to have ended. *See In re: Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008) (quoting *In re: Holiday Magic*, 433 F. Supp. at 1126). Here, Judge John L. Kane of the District of Colorado has denied defendants' request for such a suggestion.¹ Without a suggestion of remand, a party advocating Section 1407 remand "bears a strong burden of persuasion." *In re: Holiday Magic*, 433 F. Supp. at 1126.

In requesting remand, defendants argue that (1) the California Fund action is the sole remaining case in MDL No. 2063; (2) no common proceedings are left to be coordinated; (3) future rulings will affect the scope of trial in the transferor court, making immediate remand appropriate; and (4) differences in Ninth and Tenth Circuit law on *Daubert* will make continued proceedings in the transferee court inefficient. The transferee judge considered all of these arguments and found that remand was premature. He determined that "there is considerable, valuable pretrial work to be

* Judge Lewis A. Kaplan and Judge Catherine D. Perry took no part in the decision of this matter.

¹ *See In re: Oppenheimer Rochester Funds Group Secs. Litig.*, No. 09-md-02063, Order Approving Class Notice, Discovery Schedule, and Declining Suggestion of Early Remand of MDL Action, Doc. No. 600, at 1 (D. Colo. Jan. 28, 2016) (Order Declining Suggestion of Early Remand).

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done before efficiencies shift to the trial court judge,” including anticipated summary judgment, *Daubert*, and discovery motions. *See* Order Declining Suggestion of Early Remand at 1 & n.1. He further noted that these proceedings would benefit from his “familiarity with the complex securities and practices at issue,” which he has developed in presiding over MDL No. 2063 for six years. *Id.* These proceedings include a decision granting class certification in the California Fund action only seven months ago and ongoing class-related proceedings. Thus, defendants have not met their burden of showing that pretrial proceedings are essentially complete, or that continued centralization would not serve the just and efficient conduct of the litigation.² On this record, we are persuaded that the remaining pretrial proceedings would be addressed more efficiently by the transferee court.

IT IS THEREFORE ORDERED that the motion for Section 1407 remand is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle

Charles A. Breyer
R. David Proctor

² That the California Fund action is the sole remaining case is not dispositive. *See In re: Holiday Magic*, 433 F. Supp. at 1126–27 (denying remand of the “only action . . . actively being prosecuted in the transferee court” where the transferee court, which had not suggested remand, was “thoroughly familiar with the issues in this entire litigation”).

**IN RE: OPPENHEIMER ROCHESTER FUNDS
GROUP SECURITIES LITIGATION**

MDL No. 2063

SCHEDULE A

Northern District of California

RIVERA v. OPPENHEIMER CALIFORNIA MUNICIPAL FUND, ET AL.,
C.A. No. 3:09-00567 (D. Colorado, C.A. No. 1:09-01485)

TACKMANN v. OPPENHEIMERFUNDS, INC., ET AL., C.A. No. 3:09-01184
(D. Colorado, C.A. No. 1:09-01486)

LOWE v. OPPENHEIMER CALIFORNIA MUNICIPAL FUND, ET AL.,
C.A. No. 3:09-01243 (D. Colorado, C.A. No. 1:09-01484)

MILHEM v. OPPENHEIMER CALIFORNIA MUNICIPAL FUND, ET AL.,
C.A. No. 3:09-01414 (D. Colorado, C.A. No. 1:09-01487)