

## **In Re Holiday Magic Securities and Antitrust Litigation**

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*Jeffrey A. Babener, principal attorney in the Portland, Oregon, law firm Babener & Associates, and editor of [www.mlmllegal.com](http://www.mlmllegal.com), represents many of the leading direct selling companies in the United States and abroad.*

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## **In Re Holiday Magic Securities and Antitrust Litigation**

**Case:** In Re Holiday Magic Securities and Antitrust Litigation (1974)

**Subject Category:** Class Actions , Securities

**Agency Involved:** Judicial Panel on Multidistrict Litigation

**Court:** Judicial Panel on Multidistrict Litigation

**Case Synopsis:** The Judicial Panel on Multidistrict Litigation was asked to decide what would be the proper venue to hold pretrial proceedings in the Holiday Magic multidistrict litigation.

**Legal Issue:** Where is the proper venue to consolidate pretrial proceedings in a litigation proceeding consisting of 5 cases in 4 districts?

**Court Ruling:** The Panel transferred pretrial proceeding to the Northern District of California because Holiday Magic was located there, most of the witnesses were also there, and litigation was currently pending in that court that had already made significant forward progress. Common questions of law and fact were present in all of the actions and transfer was necessary to avoid duplication of efforts.

**Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing:** The venue in a multidistrict litigation case will generally be the one most convenient for most parties and promote and efficient conclusion to the litigation.

**In Re Holiday Magic Securities and Antitrust Litigation** , 368 F.Supp 806 (1973) : The Panel transferred pretrial proceeding to the Northern District of California because Holiday Magic was located there, most of the witnesses were also there, and litigation was currently pending in that court that had already made significant forward progress. Common questions of law and fact were present in all of the actions and transfer was necessary to avoid duplication of efforts.

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368 F.Supp. 806

In re HOLIDAY MAGIC SECURITIES AND ANTITRUST LITIGATION.

No. 124.

Judicial Panel on Multidistrict Litigation.

April 6, 1973.

Opinion and Order Dec. 27, 1973.

\*806 ORDER

ALFRED P. MURRAH, Chairman.

The Panel having found, upon the basis of the papers submitted and the hearing held, that the actions listed on the attached Schedule A involve common questions of fact and that transfer of these actions to the Northern District of California for coordinated or consolidated pretrial proceedings would serve the convenience of the parties and witnesses and would further the just and efficient conduct of the litigation,

It is ordered that all actions on the attached Schedule A pending in districts other than the Northern District of California be, and the same hereby are, transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Lloyd H. Burke, for coordinated or consolidated pretrial proceedings, pursuant to 28 U.S.C. 1407, with the actions pending in that district and listed on Schedule A.

A full opinion and order will be filed hereafter. OPINION AND ORDER

Before ALFRED P. MURRAH, Chairman, and JOHN MINOR WISDOM [FN\*], EDWARD WEINFELD, EDWIN A. ROBSON, WILLIAM H. BECKER, JOSEPH S. LORD, III [FN\*], and STANLEY A. WEIGEL, Judges of the Panel.

FN\* Although Judges Wisdom and Lord were unable to attend the Panel hearing, they have, with the consent of all parties, participated in this decision.

\*807 PER CURIAM.

This litigation consists of five actions pending in four different districts against Holiday Magic, Inc. and its officers and directors. Plaintiffs in the action pending in the Western District of Pennsylvania move the Panel for an order transferring all actions to a single district for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. 1407. All parties except plaintiff Gonzalez favor transfer of their respective actions. We find that all of these actions involve common questions of fact and that transfer to the Northern District of California will best serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. [FN1]

FN1. In order to expedite the pretrial processing of this litigation, we previously issued a brief order transferring these actions to the Northern District of California for coordinated or consolidated pretrial proceedings under 28 U.S.C. 1407. This per curiam opinion embodies the reasons for our decision.

Plaintiffs in these actions allege that defendants' activities concerning Holiday Magic's multilevel sales and distribution system were fraudulent and in violation of state and federal securities and antitrust laws. In addition, plaintiffs in each action purport to represent a class comprised of distributors of Holiday Magic products.

Because all actions in this litigation clearly raise common factual issues and contain similar class allegations, transfer to a single district for coordinated or consolidated pretrial proceedings is necessary in order to avoid duplication of discovery and eliminate the possibility of inconsistent class determinations. See, e. g., *In re Glenn W. Turner Enterprises Litigation*, 355 F.Supp. 1402 (Jud.Pan.Mult.Lit.1973).

Plaintiff Gonzalez opposes transfer on the ground that he has filed a motion for summary judgment in the transferor court and that if it is granted the action will be concluded, thereby negating any need for transfer under Section 1407. Plaintiff concedes, however, that transfer would be appropriate if the motion is denied. Inasmuch as the criteria for transfer of this action under Section 1407 are clearly satisfied and the transferee judge has the power to entertain a motion for summary judgment, *In re Butterfield Patent Infringement Litigation*, 328 F.Supp. 513, 514 (Jud.Pan.Mult.Lit.1970), there is no reason for denying transfer of this action.

We find that the Northern District of California is the most appropriate transferee forum for this litigation. The two actions already pending in that district have been transferred there for all purposes under 28 U.S.C. 1404(a). The district selected by the Section 1404(a) transferor judges and the reasons given therefor are normally entitled to great weight in selecting the most appropriate transferee district for Section 1407 proceedings. See, *In re Master Key Antitrust Litigation*, 320 F.Supp. 1404, 1406 (Jud.Pan.Mult.Lit.1971). Furthermore, Holiday Magic's home office is in the Northern District of

California and, as a result, many of the anticipated witnesses and relevant documents are located there. And finally, it appears that the actions already pending in the Northern District of California are in a more advanced stage of pretrial proceedings than the other actions in this litigation.

It is therefore ordered that all actions listed on the attached Schedule A pending in districts other than the Northern District of California be, and the same hereby are, transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Lloyd H. Burke, for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. 1407 with the actions \*808 already pending in that district and listed on Schedule A.

#### SCHEDULE A

Northern District of California

Jennette McKissack, et al. v. Civil Action

Holiday Magic, Inc. No. C-72-1992-LHB

Larry E. Anderson v. Holiday Civil Action

Magic, Inc. No. C-73-0225-RFP

Southern District of New York

Rafael P. Gonzalez v. Holiday Civil Action

Magic, Inc. No. 72 Civ. 3838

Eastern District of New York

James Dione v. Holiday Magic, Civil Action

Inc. No. 72 Civ. 1331

Western District of Pennsylvania

Frank I. Marshall, et al. v. Civil Action

Holiday Magic, Inc. No. 72-899

Not Reported in F.Supp.

1973-2 Trade Cases P 74,838

(Cite as: 1973 WL 920 (Jud.Pan.Mult.Lit.)) In re Holiday Magic Securities and Antitrust Litigation. Docket No. 124 Judicial Panel on Multidistrict Litigation. Dated December 27, 1973

Before Alfred P. MURRAH, Chairman, and John Minor WISDOM [FN\*], Edward WEINFELD, Edwin A. ROBSON, William H. BECKER, Joseph S. LORD, III [FN\*], and Stanley A. WEIGEL, Judges of the Panel.

FN\* Although Judges Wisdom and Lord were unable to attend the Panel hearing, they have, with the consent of all parties, participated in this decision. Opinion and Order

PER CURIAM:

\*1 This litigation consists of five actions pending in four different districts against Holiday Magic, Inc. and its officers and directors. Plaintiffs in the action pending in the Western District of Pennsylvania move the Panel for an order transferring all actions to a single district for coordinated or consolidated pretrial proceedings pursuant to 28 U. S. C. 1407. All parties except plaintiff Gonzalez favor transfer of their respective actions. We find that all of these actions involve common questions of fact and that transfer to the Northern District of California will best serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. [FN1]

FN1 In order to expedite the pretrial processing of this litigation, we previously issued a brief order transferring these actions to the Northern District of California for coordinated or consolidated pretrial proceedings under 28 U. S. C. 1407. This per curiam opinion embodies the reasons for our decision.

Plaintiffs in these actions allege that defendants' activities concerning Holiday Magic's multilevel sales and distribution system were fraudulent and in violation of state and federal securities and antitrust laws. In addition, plaintiffs in each action purport to represent a class comprised of distributors of Holiday Magic products.

Because all actions in this litigation clearly raise common factual issues and contain similar class allegations, transfer to a single district for coordinated or consolidated pretrial proceedings is necessary in order to avoid duplication of discovery and eliminate the possibility of inconsistent class determinations. See, e. g., In re Glenn W. Turner Enterprises Litigation, 355 F. Supp. 1402 (J. P. M. L. 1973).

Plaintiff Gonzalez opposes transfer on the ground that he has filed a motion for summary judgment in the transferor court and that if it is granted the action will be concluded, thereby negating any need for transfer under Section 1407. Plaintiff concedes, however, that transfer would be appropriate if the motion is denied. Inasmuch as the criteria for transfer of this action under Section 1407 are clearly satisfied and the transferee judge has the power to entertain a motion for summary judgment, In re Butterfield Patent Infringement Litigation, 328 F. Supp. 513, 514 (J. P. M. L. 1970), there is no reason for denying transfer of this action.

We find that the Northern District of California is the most appropriate transferee forum for this litigation. The two actions already pending in that district have been transferred there for all purposes under 28 U. S. C. 1404(a). The district selected by the Section 1404(a) transferor judges and the reasons given therefor are normally entitled to great weight in selecting the most appropriate transferee district for Section 1407 proceedings. See, *In re Master Key Antitrust Litigation*, 320 F. Supp. 1404, 1406 (J. P. M. L. 1971). Furthermore, Holiday Magic's home office is in the Northern District of California and, as a result, many of the anticipated witnesses and relevant documents are located there. And finally, it appears that the actions already pending in the Northern District of California are in a more advanced stage of pretrial proceedings than the other actions in this litigation.

\*2 It Is Therefore Ordered that all actions listed on the attached Schedule A pending in districts other than the Northern District of California be, and the same hereby are, transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Lloyd H. Burke, for coordinated or consolidated pretrial proceedings pursuant to 28 U. S. C. 1407 with the actions already pending in that district and listed on Schedule A.

372 F.Supp. 1167.

Fed. Sec. L. Rep. P 94,440, 1974-1 Trade Cases P 74,968

(Cite as: 372 F.Supp. 1167) *In re HOLIDAY MAGIC SECURITIES AND ANTITRUST LITIGATION*. Loretta Bohaty v. Holiday Magic, Inc., et al., N.D. Illinois, Civil Action No. 73C 2031. Leonard Fredrick v. Holiday Magic, Inc., et al., S.D. New York, Civil Action No. 73 Civ. 1411. No. 124. Judicial Panel on Multidistrict Litigation. March 18, 1974.

Proceeding relating to motions to transfer federal actions, commenced in New York and Illinois to the Northern District of California to which all actions in the litigation had been previously transferred for coordinated pretrial proceedings. The Judicial Panel on Multidistrict Litigation held that since the actions appeared to have factual issues common to previously transferred actions they would be transferred despite objection of Illinois plaintiff that she could not afford to pay transportation of cost of witnesses from Illinois and objection of New York plaintiff, represented by pro bono counsel, that she could not afford to hire counsel in California.

Actions transferred.

[1] FEDERAL COURTS k151

170Bk151

It appearing that federal court actions instituted in New York and Illinois involved the factual issues common to the actions previously transferred to the Northern District of California for coordinated pretrial proceedings pursuant to statute, the federal actions in New York and Illinois would also be

transferred over objection that plaintiff in Illinois action could not afford to pay for transportation of witnesses from Illinois to California and objection of plaintiff in New York action, represented by pro bono counsel in New York, that he could not afford to hire California counsel. 28 U.S.C.A. 1407; Fed.Rules Civ.Proc. rule 45(d)(2), 28 U.S.C.A.

[2] FEDERAL COURTS k157

170Bk157

Request of plaintiff in federal action in New York, where he was represented by pro bono counsel, to condition the transfer of suit for coordinated pretrial proceedings on the appointment of a pro bono liaison counsel to represent him in the transferee district was beyond scope of power conferred upon Judicial Panel on Multidistrict Litigation and request was more properly presented to transferee judge. 28 U.S.C.A. 1407.

\*1167 Before ALFRED P. MURRAH,\* Chairman, and JOHN MINOR WISDOM, EDWARD WEINFELD, EDWIN A ROBSON, WILLIAM, H. BECKER, JOSEPH S. LORD, III, and STANLEY A. WEIGEL, [FN\*] Judges of the Panel.

FN\*. Although Judges Murrah and Weigel were unable to attend the Panel hearing, they have, with the consent of all parties, participated in this decision.

OPINION AND ORDER

PER CURIAM.

The Panel previously transferred all actions in this litigation to the Northern District of California and, with the consent of that court, assigned them to the Honorable Lloyd H. Burke for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. 1407. In re Holiday Magic Securities & Antitrust Litigation, 368 F.Supp. 806, Jud.Pan.Mult.Lit. (1973). Since the above-captioned actions appeared to involve factual issues common to the previously transferred actions, the Panel issued an order conditionally transferring them to the Northern District of California. Both plaintiffs oppose transfer. We find that these actions raise questions of fact common to the actions previously transferred to the Northern District of California and that their transfer for coordinated or consolidated pretrial proceedings will best serve the convenience of the parties and witnesses and promote\*1168 the just and efficient conduct of the litigation.

[1] Both plaintiffs contest transfer on the ground that it would impose an extreme financial hardship upon them. Plaintiff Bohaty stresses that she cannot afford to transport witnesses from Illinois to California while plaintiff Fredrick, who is represented by pro bono counsel in New York, stresses that he cannot afford to hire California counsel.

These arguments are not persuasive. Like the actions previously transferred in this litigation, both the Bohaty and Fredrick actions allege that defendants' activities concerning Holiday Magic's multilevel sales and distribution system were fraudulent and in violation of either the federal securities or antitrust laws. Thus, common questions of fact are prevalent and transfer is necessary to prevent needless duplication of discovery.

Plaintiff Bohaty's concern about the cost of transporting witnesses is unwarranted because a witness is usually deposed at or near his place of residence. See Fed.R.Civ.P. 45(d)(2). Moreover, a Section 1407 transfer is for pretrial proceedings only. Trial of the action will still occur in Illinois.

[2] We recognize plaintiff Fredrick's concern regarding payment of attorneys' fees, but we nonetheless find that the criteria for transfer of his action under Section 1407 are clearly satisfied. And we must deny plaintiff's alternative request to condition the transfer order on the appointment of pro bono liaison counsel to represent him in the transferee district. Such a request is beyond the scope of power conferred upon the Panel by Section 1407 and is a matter more properly presented to the transferee judge.

It is therefore ordered that the actions entitled Loretta Bohaty v. Holiday Magic, Inc., et al., N.D.Illinois, Civil Action No. 73C 2031 and Leonard Fredrick v. Holiday Magic, Inc., et al., S.D.New York, Civil Action No. 73 Civ. 1411 be, and the same hereby are, transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Lloyd H. Burke for coordinated or consolidated pretrial proceedings with the actions in the above-captioned litigation which are already pending in that district.

<http://www.mllegal.com/legal-cases/InReHolidayMagicSecuritiesandAntitrustLitigation.php>