

Class actions against Meta and hospitals shipped to San Francisco federal court

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An Illinois case alleging patients' data was breached by hospitals and Meta was consolidated and transferred to a Northern California federal courtroom, a move which could see damages drop.

On 28 November a federal judge in the US District Court for the Northern District of Illinois approved transferring a putative class action data breach suit against Meta and Advocate Aurora Health to the *In re Meta Pixel Healthcare Litigation* docket in Northern California.

The Illinois lawsuit was [filed](#) on 28 October, roughly a week after Illinois- and Wisconsin-based health care provider Advocate Aurora Health announced the Meta code installed in its patient portal breached personal data. But Advocate Aurora patients are not the only ones taking issue with hospitals' use of Meta's code.

On 17 June, anonymized plaintiffs filed a class action suit in a federal Northern California court against Meta on behalf of "millions of Americans" whose medical privacy was violated by Meta's Pixel tracking tool.

Plaintiffs in the California case claimed Meta breached contracts and violated California's unfair competition and invasion of privacy statutes, the Federal Electronic Communications Privacy Act and other laws.

Similar allegations were lodged in the Illinois lawsuit and those plaintiffs and Meta filed a motion requesting their matter be transferred to *In re Meta Pixel Healthcare Litigation*, noting at least two other class actions were also consolidated to the Northern District of California. Judge Joan Lefkow of the Northern District of Illinois approved the request and shipped the case to the Northern District of California.

Consolidations are not a new phenomenon in US litigation. Such transfers are built into the civil rules at the federal and state level and can be initiated by either parties or by the court. However, they can change the dynamics of a case.

Stanford Law School professor Deborah Hensler said: "As a formal matter the rationale for allowing that type of consolidation is efficiency and of course it is more efficient than trying to deal with hundreds of cases that are very similar individually or just

trying to deal with dozens of class actions that arise out of the same matter.

Formally, the objective is efficiency but the process has an impact on the dynamics of the litigation and can ultimately have an effect on how the case is resolved.”

Transferring a case to another venue changes not only the potential jury pool but the judge handing day-to-day and significant decisions in the case, Hensler noted.

“If the case was filed in the Northern District of Illinois and assigned to a specific judge the effect of transferring it to the Northern District of California means it's before a different judge that may have different ideas of how to manage the case. Those views could ultimately affect how the case is resolved,” she added.

However, motions to consolidate are typically requested after significant “forum shopping” to find a venue that could be most favourable to a party, noted Florida A&M University College of Law professor LeRoy Pernell.

“There's a lot of strategies that are involved on each side,” he said. “It is what's known as forum shopping so that if you consolidate cases before certain judges and the cases are consolidated ... [it] might be more favourable to [that party].”

While consolidating cases may also speed up litigation it may also decrease damage rewards, Pernell added.

“It could – for example – speed up the entire trial process if you're looking to get a quick resolution. That's another reason sometimes plaintiffs don't want to consolidate because they would say if they have several cases [with] similar issues if they don't prevail in one they may be able to prevail in another,” Pernell said.

He also noted a jury may limit how much it awards a party in a large consolidated case while jurors in individual cases may not be privy to previous damages awarded and may not confine their verdicts.

However, University of Georgia School of Law professor Elizabeth Chamblee Burch said correlating litigation consolidation to success rates and damages is difficult. “That's a harder question to answer, it's based on the strength of the cases and presenting the merits,” Burch said.

Still, what is clear is that consolidating cases “creates a little more competition” for law firms jockeying to be lead counsel, Burch added.

Indeed, Hensler noted that while all attorneys participating in the litigation earn a slice of any attorney fees granted, lead counsel is a sought-after title because they earn the most from the litigation.

“Firms that are involved in this type of litigation want to be involved in the leadership position and importantly the firms that lead these cases make the most fees. It has a real impact on how lawyers [and] what law firms will earn if in the end the plaintiffs prevail in the case,” Hensler said.

According to *In re Meta Pixel Healthcare Litigation's* docket, a hearing to appoint interim lead counsel is set to be held 14 December.

Counsel to Alistair Stewart

Stephan Zouras

Partners James B. Zouras, Teresa M. Becvar and Ryan F. Stephan in Chicago are assisted by Mohammed Rathur

Counsel to Advocate Aurora Health

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Partner Jeffrey J. Bushofsky in Chicago is assisted by Francis Liesman III

Counsel to Meta Platforms

Gibson Dunn & Crutcher

Partner Lauren R. Goldman in New York

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Attorney Matthew Lawrence Kutcher in Chicago

Documents

Motion granted



Motion to consolidate



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