

UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

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IN RE: MDL NO. 2360

SCIENCE APPLICATIONS  
INTERNATIONAL CORP.  
(SAIC) BACKUP TAPE  
DATA THEFT LITIGATION

-----X Washington, D.C.  
Thursday, May 31, 2012  
12:15 P.M.

TRANSCRIPT OF HEARING

PRESIDING:

JUDGE JOHN G. HEYBURN, CHAIR

JUDGE W. ROYAL FURGESON, JR.,

JUDGE BARBARA S. JONES

JUDGE PAUL J. BARBADORO

JUDGE MARJORIE O. RENDELL

JUDGE CHARLES R. BREYER

Court Reporter: Lisa Walker Griffith, RPR  
U.S. District Courthouse  
Room 6507  
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produced by computer.

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**P R O C E E D I N G S**

JUDGE HEYBURN: 2360. This is the Science Applications Data Theft litigation. And we have four arguments.

Mr. Chernof.

MR. CHERNOF: Good afternoon, Your Honor. Thank you very much. To the panel, appreciate your time. It is now afternoon, so I will try to be as brief as possible.

Your Honor, my name is Ken Chernof and I'm from Arnold & Porter. And I'm presenting on behalf of SAIC. As the panel knows, SAIC has filed its motion seeking centralization of eight purported class actions filed in four different district courts across the country, all arising out of the same incident, the theft of certain backup data tapes from the, from an employee of SAIC. And those data tapes contained information relating to the Tricare health program, which is the Department of Defense's healthcare program.

JUDGE FURGESON: By the way, I can understand if we do centralize, why we would centralize in the District of Columbia. Why would we then centralize in the Western District of Texas? I know there are cases pending there, but it looks like so much activity, center of gravity, everything is in the D.C. courts.

MR. CHERNOF: Your Honor, we believe that D.C. is an appropriate district to transfer the cases to and for them to

1 proceed in a consolidated fashion for the reasons set forth  
2 in our brief. SAIC is headquartered in the area, the federal  
3 government defendants are all located in the area. Five of  
4 the eight cases were filed in the District Court here in D.C,  
5 so we believe it would be absolutely appropriate to transfer  
6 the cases here.

7 As an alternative, we don't think that the Western  
8 District of Texas would be an inappropriate jurisdiction.  
9 San Antonio is the location of the theft of the underlying  
10 backup data tapes. And for that reason, there is some nexus  
11 to the district. However, overall, we do not disagree that  
12 D.C. is a convenient jurisdiction for the litigation of these  
13 cases. I'd be happy to answer any questions that the panel  
14 has.

15 JUDGE HEYBURN: That's fine. Thank you very much.

16 MR. CHERNOF: Thank you.

17 JUDGE HEYBURN: Mr. Jones.

18 MR. JONES: May it please the Court. Luke Jones on  
19 behalf of the United States. Federal defendant supports  
20 centralization, but only in the District of Columbia because  
21 only the District of Columbia provides the venue that would  
22 advance the goals of Section 1407. Although the data theft  
23 occurred in Texas, the vast majority of evidence and  
24 witnesses that is likely to be at issue is here in the D.C.  
25 area. The majority of parties want D.C., the majority of

1 cases are in D.C. The first case was in D.C and this  
2 district is obviously capable of handling MDL litigation.

3 I would also note that on the issue of conserving  
4 resources, it's certainly true the taxpayer resources would  
5 be most conserved by keeping the Privacy Act cases here in  
6 D.C. by choosing DDC as the transfer venue.

7 JUDGE HEYBURN: All right. Thank you.

8 Ms. Fryszman.

9 MS. FRYSZMAN: My name is Agnieszka Fryszman. I'm  
10 from Cohen, Milstein, Sellers & Toll. I'm speaking on behalf  
11 of six of the eight plaintiff groups, all of whom support  
12 consolidation in the District of Columbia. I think  
13 Mr. Barnow, who is the only advocate for Texas, is gone. I'm  
14 happy to answer any questions.

15 JUDGE BREYER: Okay. This is a good time to quit  
16 while you're ahead.

17 MS. FRYSZMAN: Exactly, it's almost lunchtime.

18 JUDGE BREYER: You're doing great so far. Here he  
19 comes.

20 MS. FRYSZMAN: I think all of the factors the panel  
21 traditionally considers favor consolidation here. Regardless  
22 of where the theft occurred, I think the case would be the  
23 same. If the theft had occurred in Nebraska or Idaho or  
24 Virginia, the case would be the same. The witnesses are  
25 here. The policies, procedures and management that are at

1 issue are here, centered here in the District of Columbia.  
2 That's where the witnesses are. And I guess I will just --  
3 that's the balance of my time. Thank you.

4 JUDGE HEYBURN: Okay. Thank you.

5 Mr. Barnow, they all want to be in the D.C. and D.C.  
6 is closer to Chicago than Texas is, isn't it, or not?

7 MR. BARNOW: Well, they're making a mistake. And  
8 I'm here to try to correct it, I guess.

9 To me, everything really does point to Texas or the  
10 Texas case. It's the first filed case when you count the one  
11 in Florida, that members of that group went ahead and faded  
12 on when they were confronted with a motion to dismiss. It  
13 has the most plaintiffs in a particular case, is has the  
14 support of the California case. And it's probably the most  
15 advanced, although I'd say by a hair in that regard, mainly  
16 because there's a motion to dismiss which we've responded to.

17 But importantly, to me, when you look at the amount  
18 of people involved in the Texas case by numbers, it's a  
19 staggering percentage.

20 JUDGE FURGESON: By the way, just to let you know,  
21 my records don't show Texas as the first filed case.

22 MR. BARNOW: Thank you. It's the first filed case  
23 presently standing of the SAIC cases. There was one in  
24 Florida, which the Papantonio firm dismissed when they were  
25 confronted with a motion to dismiss and they refiled in

1 Washington, D.C. The first filed case is not an SAIC case.  
2 It's Tricare alone, and that was in D.C. But the other SAIC  
3 cases followed the one we have in Texas, but for the one in  
4 Florida, which was voluntarily dismissed when it was  
5 confronted with a motion to dismiss.

6 JUDGE HEYBURN: Okay. Thank you.

7 MR. BARNOW: All right. Thank you.

8 In terms of the coverage, we've shown the numbers in  
9 our papers. The percentages of the plaintiffs involved are  
10 in the Texas case, are staggering compared to almost  
11 inconsequential numbers of absentee class members in the D.C.  
12 case. I think it shoots at about 7,000. The Texas case  
13 covers about 2.8 million, where I think 61 percent, if I  
14 remember papers correctly. The situation with regard to the  
15 D.C. case, I know the government --

16 JUDGE FURGESON: Nationwide classes, correct? But  
17 you say they're -- there's a request for a nationwide class.

18 MR. BARNOW: There is.

19 JUDGE FURGESON: And you say almost all of the class  
20 is in Texas?

21 MR. BARNOW: In terms of the plaintiff's home  
22 states, and it's in our papers, I think it's the number 61  
23 percent of the membership is represented by those plaintiffs  
24 in that case. And I believe it's 20-some percent are in  
25 Texas alone. California is second with about 220,000 class

1 members. Texas, I believe, and if I misspeak it's  
2 unintentionally, I think they're pushing six or eight or  
3 900,000. It's a staggering number. Whereas, D.C. has about  
4 7,000, if I remember the number. It's between six and 8,000,  
5 but it's a lower, lower number.

6 So, even if you take just Texas itself, the people  
7 that access the facility, it's about 20-some percent. If you  
8 take all the states where the Texas plaintiffs that are  
9 plaintiffs in a Texas case are from, it's shoots 61 percent.  
10 Most importantly in addition to that, well, also very  
11 important, is the fact that there's no dispute, but that the  
12 incident occurred there. That's where the break-in was,  
13 that's where the storage was, and we can go right down the  
14 list. The facilities are there, the medical treatment was  
15 there that was accessed, et cetera.

16 One thing I do think is also somewhat different is  
17 that, while I know the government wants their case to be in  
18 D.C., and I listened to one of their earlier arguments, I  
19 believe it was Mr. Sellinger from Wal-Mart, and a light went  
20 on. And I haven't thought it fully through, but if the panel  
21 gives a consideration, there may be something in it. The  
22 Tricare case is fundamentally very different. And because  
23 they've included Secretary Panetta in it. And when you start  
24 accusing or alleging certain woefulness and egregious conduct  
25 on behalf of a government official, I think you may be



1 getting into some highly confidential maybe governmental  
2 secret type stuff, which the SAIC case doesn't need.

3 I'm not suggesting this is necessarily the case, but  
4 that argument that Mr. Sellinger alerted me to the  
5 possibility, that maybe Tricare stays in D.C. and they can  
6 battle it out as to whether or not Mr. Panetta was a bad guy  
7 and get into all those governmental issues, and not burden  
8 4.5 million people on a pending case that's advancing in  
9 Texas and doesn't need to accuse the government on state  
10 secrets and other things of that nature.

11 But that's just a suggestion. Either way, the  
12 operative facts of this, the witnesses, everything, the  
13 occurrence, is really in Texas. And it's hard to compare 61  
14 percent of the --

15 JUDGE HEYBURN: Thank you.

16 MR. BARNOW: -- class membership --

17 JUDGE HEYBURN: We understand that.

18 MR. BARNOW: -- to D.C. Thank you very much.

19 JUDGE HEYBURN: Thank you. We'll take it under  
20 submission. Appreciate all of you being here and arguing.  
21 Thank you.

22 (Whereupon, at 12:26 P.M., the hearing concluded.)  
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CERTIFICATE OF REPORTER

I, Lisa Walker Griffith, certify that the foregoing  
is a correct transcript from the record of proceedings in the  
above-entitled matter.

\_\_\_\_\_  
Lisa Walker Griffith

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Date