

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: WELDING FUME PRODUCTS
LIABILITY LITIGATION**

Janice M. Emerson v. Lincoln Electric Holdings, Inc.,)	
N.D. Ohio, C.A. No. 1:09-17066)	MDL No. 1535
(W.D. Missouri, C.A. No. 5:09-6004))	

ORDER DENYING REMAND

Before the Panel:* Pursuant to Rule 10.3, plaintiff in the *Emerson* action, which was previously transferred from the Western District of Missouri to MDL No. 1535, moves for an order remanding her action to the Western District of Missouri. Responding defendant Lincoln Electric Holdings, Inc., opposes the motion.

After considering all arguments of counsel, we conclude that remand is not appropriate at this time, and therefore will deny plaintiff's motion. In considering the question of Section 1407 remand, we have consistently accorded great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, as that judge 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). The transferee judge's suggestion of remand to the Panel, *see* Rule 10.1(b), is obviously an indication that the judge perceives 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).

Here, Judge Kathleen M. O'Malley has not yet issued a suggestion of remand concerning *Emerson*. Moreover, despite plaintiff's suggestion to the contrary, Judge O'Malley continues to preside over this MDL, pursuant to an intercircuit assignment. *See* 28 U.S.C. § 291. On this record, we find that moving plaintiff has failed to offer the Panel a valid reason why it should order remand in the absence of Judge O'Malley's suggestion to the Panel.

* Judge Kathryn H. Vratil did not participate in the decision of this matter.

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

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "John G. Heyburn II", is written above a horizontal line. The signature is cursive and includes a small mark at the end.

John G. Heyburn II
Chairman

W. Royal Furgeson, Jr.
Paul J. Barbadoro
Charles R. Breyer

Barbara S. Jones
Marjorie O. Rendell