

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST LITIGATION**

MDL No. 1566

ORDER DENYING REMAND

Before the Panel:* Before the Panel are two motions brought by plaintiffs in four of the nine actions remaining in this MDL. The nine actions are listed on the attached Schedule A. In the first motion, the self-described “Wisconsin plaintiffs” – plaintiffs in three actions transferred from the Eastern District of Michigan (one action) and the Western District of Wisconsin (two actions) – move under Panel Rule 10.3 for Section 1407 remand of all nine actions. Alternatively, the Wisconsin plaintiffs seek reassignment of the MDL to a district in which at least one of the actions can be tried – preferably the Western District of Wisconsin.¹ In the second motion, plaintiff Reorganized FLI, Inc., moves under the same Rule for Section 1407 remand of its action to the District of Kansas.

Plaintiffs in three of the other five actions (*Learjet*, *Breckenridge*, and *Heartland*) do not oppose Section 1407 remand, so long as all actions in the MDL are remanded. Sinclair Oil Corporation (Sinclair), which is the plaintiff in the remaining two actions, states that it believes continuing to litigate in the MDL “will lead to the expeditious resolution of pretrial proceedings.” But, like the *Learjet*, *Breckenridge*, and *Heartland* plaintiffs, Sinclair asks that if any actions are remanded, then all actions be remanded. Responding defendants oppose remand or reassignment, and argue that all cases should remain in the MDL for the time being.²

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

¹ The MDL is pending in the District of Nevada, and the nine actions were transferred there from one or another of seven districts.

² Responding defendants are CMS Energy Corp., CMS Energy Resource Management Company, Cantera Gas Co., OneOK Energy Services Co., LP, AEP Energy Services, Inc., American Electric Power Co., Inc., CMS Field Services, CMS Marketing Service & Trading Co., Centerpoint Energy Inc., Coral Energy Resources, LP, Duke Energy Corporation, Duke Trading & Marketing Company, LLC, Dynegy Marketing & Trade, Dynegy Marketing & Trade, Inc., El Paso Corp., El Paso Merchant Energy, LP, Oneok Inc., Reliant Energy Services, Inc., Reliant Energy, Inc., Reliant Resources, Inc, Williams Companies, Inc., Williams Energy Marketing & Trading Co., Williams Merchant Service Co., Inc., Xcel Energy Inc., e prime Energy Marketing Inc., e prime Inc., and Northern States Power Co., Inc.

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After considering the argument of counsel, we conclude that remand is not appropriate at this time. As all parties acknowledge, pretrial proceedings, including at least some discovery, have not been completed in the nine actions.³ Although moving plaintiffs contend that the remaining proceedings are largely case-specific in nature, defendants argue otherwise, and cite specific examples of yet-to-be-taken discovery (including over 50 depositions), the possibility of new briefing on class certification motions, and their intent to file dispositive motions on grounds not previously raised. That plaintiffs in a majority of the actions either do not expressly seek remand (the *Learjet*, *Heartland*, and *Breckinridge* plaintiffs), or do not oppose continuing to litigate in the MDL (*Sinclair*) suggests that defendants have the better argument. Indeed, plaintiffs have not contested defendants' assertions regarding the extent of the yet-to-be-taken discovery, and those assertions find support in the record. We note that following the retirement of the original transferee judge, we recently reassigned this MDL to the Honorable Robert Clive Jones. In these circumstances, we conclude that the most prudent course is to provide Judge Jones the opportunity to review and assess the status of litigation in-depth (with the assistance, if he desires, of Magistrate Judge Peggy A. Leen, who has significant familiarity with the litigation).⁴ If he determines that the continued inclusion in the MDL of one or more of these actions is no longer warranted, he is free to suggest Section 1407 remand of that action or actions.⁵

We also deny the Wisconsin plaintiffs' alternative request for retransfer of the MDL. The Panel is "extremely reluctant" to order retransfer of an MDL,⁶ and has stated that retransfer will be

³ The actions were administratively closed for several years during the pendency of appellate proceedings. Those proceedings concluded with the Supreme Court's April 2015 decision in *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015).

⁴ Plaintiffs in the *Learjet*, *Breckinridge*, *Heartland*, and *Sinclair* actions all acknowledge the substantial role that Magistrate Judge Leen has played in overseeing discovery in the litigation to date, as well as the possibility that she could continue to play such a role in future pretrial proceedings.

⁵ See *In re: Mirena IUD Prods. Liab. Litig.*, 938 F. Supp. 2d 1355, 1357 (J.P.M.L. 2013) ("Once discovery and other pretrial proceedings related to the common issues have been completed, the transferee judge may suggest Section 1407 remand of actions to transferor courts for more individual discovery and trial, if necessary.").

⁶ E.g., *In re: Air Crash Disaster in the Ionian Sea*, on Sept. 8, 1974, 438 F. Supp. 932, 934 (J.P.M.L. 1977).

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ordered “only in the most extraordinary instances.”⁷ That none of the nine actions still pending in this MDL was commenced in the transferee district does not warrant retransfer.⁸

IT IS THEREFORE ORDERED that the motions for Section 1407 remand of these actions is denied.

IT IS FURTHER ORDERED that the Wisconsin plaintiffs’ alternative request for retransfer of this MDL is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
Catherine D. Perry

Charles R. Breyer
R. David Proctor

⁷ See *In re: Helicopter Crash in Germany on Sept. 26, 1975*, 443 F. Supp. 447, 450 (J.P.M.L. 1978).

⁸ See, e.g., *In re: Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 996 F. Supp. 2d 1380, 1382 (J.P.M.L. 2014) (centralizing litigation in district in which no related action was pending).

**IN RE: WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST LITIGATION**

MDL No. 1566

SCHEDULE A

District of Colorado

BRECKENRIDGE BREWERY OF COLORADO, LLC, ET AL. v. ONEOK, INC., ET AL.,
C.A. No. 1:06-01110

District of Kansas

REORGANIZED FLI, INC. v. WILLIAMS COMPANIES, INC., ET AL.,
C.A. No. 2:05-02389
LEARJET, INC., ET AL. v. ONEOK, INC., ET AL.,
C.A. No. 2:05-02513

Eastern District of Michigan

ARANDELL CORP., ET AL. v. CMS ENERGY CORPORATION, ET AL.,
C.A. No. 2:09-11114

Western District of Missouri

HEARTLAND REGIONAL MEDICAL CENTER, ET AL. v. ONEOK, INC., ET AL.,
C.A. No. 5:07-06048

Northern District of Oklahoma

SINCLAIR OIL CORPORATION v. E PRIME, INC., ET AL., C.A. No. 4:05-00435

Western District of Wisconsin

ARANDELL CORP., ET AL. v. XCEL ENERGY, INC., ET AL.,
C.A. No. 3:07-00076
NEWPAGE WISCONSIN SYSTEM, INC. v. CMS ENERGY RESOURCE
MANAGEMENT COMPANY, ET AL., C.A. No. 3:09-00240

District of Wyoming

SINCLAIR OIL CORPORATION v. ONEOK ENERGY SERVICES CO.,
C.A. No. 1:05-00254