

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: FAMILY DOLLAR STORES, INC., WAGE
AND HOUR EMPLOYMENT PRACTICES LITIGATION**

MDL No. 1932

ORDER DENYING REMAND

Before the Panel: Plaintiffs in the last remaining action in this litigation (*Samuel*) listed on the attached Schedule A, which was previously transferred from the Southern District of Florida to the Western District of North Carolina for inclusion in MDL No. 1932, move under Panel Rule 10.3 for an order remanding their action to the Southern District of Florida. Responding defendant Family Dollar Stores of Florida, Inc., opposes the motion.

After considering all argument of counsel, we conclude that remand is not appropriate at this time, and therefore we deny plaintiffs' motion. This ruling should not be surprising to plaintiffs, given that, in October 2014, we denied a similar motion to remand that they filed. We note now, as we noted then, that in considering the question of Section 1407 remand, we consistently afford great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, since the 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). A transferee judge's suggestion of remand to the Panel, *see* Rule 10.1(b), obviously indicates that the judge perceives his or 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, the transferee judge has not issued a suggestion of remand, and, in fact, he denied plaintiffs' motion for a suggestion of remand following a lengthy hearing on April 15, 2015.

The Honorable Graham C. Mullen, in his capacity as transferee judge, has become thoroughly familiar with the issues and counsel in this litigation, and he is in the best position to determine the future course of this MDL. Plaintiffs clearly are dissatisfied with some of the rulings of the transferee court (including rulings sanctioning their attorney for his improper behavior in the MDL proceedings) and wish to proceed with their claims in a forum that they may view as more favorable.¹ But, as we often have held, "Section 1407 does not authorize the Panel to act as an appellate forum for every litigant disgruntled by the rulings of a transferee judge." *In re Plumbing*

¹ Plaintiffs request that we consider whether the transferee judge should recuse himself from presiding over this MDL. We deny this request. *See In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010*, 731 F. Supp. 2d 1352, 1355 n.4 (J.P.M.L. 2010) ("The Panel, of course, has no authority to determine whether a particular judge should recuse himself or herself from presiding over a particular MDL."). We also remind counsel for plaintiffs that their motion for recusal of the transferee judge already has been denied by the Chief Judge of the Western District of North Carolina.

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Fixtures Litig., 332 F. Supp. 1047, 1048 (J.P.M.L. 1971). While our “primary purpose is not to divine the motives and strategies of the various litigants [,] where a Section 1407 motion appears intended to further the interests of particular counsel more than those of the statute, we . . . certainly find less favor with it.” *In re: CVS Caremark Corp. Wage & Hour Emp’t Practices Litig.*, 684 F. Supp. 2d 1377, 1379 (J.P.M.L. 2010). This motion represents plaintiffs’ second attempt to secure Section 1407 remand in the absence of a suggestion of remand, and now as then we find no reason to grant the request.

Pretrial motion practice is still underway as to the eight remaining plaintiffs in *Samuel*. Moving plaintiffs have—again—failed to offer any persuasive reasons why we should depart from our long-standing practice of deferring to the discretion of the transferee judge and order remand in the absence of a suggestion of remand.

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

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

**IN RE: FAMILY DOLLAR STORES, INC., WAGE
AND HOUR EMPLOYMENT PRACTICES LITIGATION**

MDL No. 1932

SCHEDULE A

Southern District of Florida

SAMUEL, ET AL. v. FAMILY DOLLAR STORES OF FLORIDA, INC., C.A. No. 0:11-
62560 (W.D. North Carolina C.A. No. 12-1951)