

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: CHINESE-MANUFACTURED DRYWALL
PRODUCTS LIABILITY LITIGATION**

Amerisure Insurance Company, et al. v. All County Drywall)
Service, Inc., et al., S.D. Florida, C.A. No. 1:12-24454) MDL No.2047

ORDER DENYING TRANSFER

Before the Panel:* Pursuant to 28 U.S.C. § 1407(c), defendants Lennar Homes, LLC and U.S. Home Corporation move to transfer this declaratory judgment insurance action (*Amerisure*) to MDL No. 2047. Responding plaintiffs Amerisure Insurance Company and Amerisure Mutual Insurance Company (collectively, Amerisure) oppose the motion.¹

In seeking transfer, movants argue that the MDL Plaintiffs’ Steering Committee (PSC), which, they contend, “exists only in the context of the MDL,” is a necessary party in *Amerisure*, and thus the case must be transferred so that the PSC can assert certain purportedly compulsory counterclaims. Movants’ argument that the PSC can litigate only within the MDL, however, is not supported by any authority. Even assuming, *arguendo*, that the PSC is so constrained, movants have not explained why the PSC’s purported inability to prosecute a given counterclaim should be of concern to the Panel (or, indeed, to movants), especially when the PSC itself has not made such an argument.² More importantly, movants have not identified the factual issues, if any, that *Amerisure* shares with those in the MDL. Aside from the aforementioned “necessary party” argument, they have not distinguished this action from other declaratory judgment insurance coverage actions that we have declined to transfer.³

To be sure, *Amerisure* and the cases in MDL No. 2047 have a common factual backdrop involving allegedly defective imported Chinese drywall and the damage it is purported to have

* Judge John G. Heyburn II took no part in the decision of this matter.

¹ The other defendants in the action did not file a response.

² The PSC did not file a response.

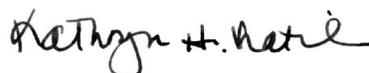
³ See Order Denying Transfer (J.P.M.L. Feb. 3, 2011) (doc. no. 344); Order Denying Transfer (J.P.M.L. Nov. 29, 2010) (doc. no. 338); Order Denying Transfer (J.P.M.L. Oct. 7, 2010) (doc. no. 318); Order Vacating Conditional Transfer Order (J.P.M.L. Aug. 9, 2010) (doc. no. 289); and Order Denying Transfer (J.P.M.L. June 15, 2010) (doc. no. 257).

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caused.⁴ The insurance coverage questions in *Amerisure*, however, likely will involve, in the main, an application of the complaint to the policy language under the applicable state law.⁵ Accordingly, much of the motion practice and other pretrial proceedings in MDL No. 2047 will be largely inapplicable to the action. In these circumstances, and consistent with our prior decisions in this docket, we conclude that inclusion of *Amerisure* in MDL No. 2047 would not serve the purposes of Section 1407.

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407(c), for transfer of this action is denied.

PANEL ON MULTIDISTRICT LITIGATION



Kathryn H. Vratil
Acting Chairman

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan

Paul G. Barbadoro
Charles R. Breyer

⁴ See *In re: Chinese-Manufactured Drywall Prods. Liab. Litig.*, 626 F. Supp. 2d 1346, 1347 (J.P.M.L. 2009) (“All actions share factual questions concerning drywall manufactured in China, imported to and distributed in the United States, and used in the construction of houses; plaintiffs in all actions allege that the drywall emits smelly, corrosive gases.”).

⁵ Citing the “Total Pollution” Exclusion contained in the subject insurance policies, plaintiffs seek a declaration that they owe no duty to defend or indemnify the underlying insureds in connection with a case pending in Florida state court – *Lennar Homes, LLC, et al. v. Knauf Gips KG, et al.*