

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: LEAD CONTAMINATED FRUIT JUICE PRODUCTS
MARKETING AND SALES PRACTICES LITIGATION**

Randy Boysen v. Walgreen Co., N.D. California,)	
C.A. No. 3:11-06262)	MDL No. 2231
Liduvina Curtis v. Wal-Mart Stores, Inc., E.D. Texas)	
C.A. No. 5:11-00213)	

ORDER DENYING TRANSFER

Before the Panel:* Pursuant to 28 U.S.C. § 1407(c), defendants Walgreen Co. (Walgreen) and Wal-Mart Stores, Inc. (Wal-Mart) move to transfer the present actions to MDL No. 2231. In the alternative, defendants request centralization of these two actions in a new MDL proceeding. Plaintiffs oppose the motion in its entirety.

These actions allege that fruit juice products sold by Walgreen (*Boysen*) and Wal-Mart (*Curtis*) contain unacceptable levels of lead and arsenic. The actions originally centralized in this MDL involved similar allegations that juice and fruit products sold by unrelated defendants contain unacceptable levels of lead. *See In re Lead Contaminated Fruit Juice Prods. Mktg. & Sales Practices Litig.*, 777 F. Supp. 2d. 1353 (J.P.M.L. 2011). In December 2011, after full briefing and a hearing, the transferee court granted defendants’ motion to dismiss and the MDL was closed. The court found that plaintiffs lacked standing, because they had not suffered an injury in fact. *See In re Fruit Juice Prods. Mktg. & Sales Practices Litig.*, No. 11-MD-2231, 2011 U.S. Dist. LEXIS 147588 (D. Mass. Dec. 21, 2011).

In support of transfer, defendants argue, *inter alia*, that (1) these actions share factual issues with MDL No. 2231, including the levels of lead or arsenic in these products and testing done by third parties and the U.S. Food and Drug Administration for lead and arsenic levels; (2) transfer will prevent inefficient re-litigation of the same issues; and (3) had these actions existed when MDL No. 2231 was centralized, they would have been included in that proceeding.

These actions are similar to those involved in MDL No. 2231, but at this time, and in these circumstances, we conclude that transfer is not the most efficient path for these actions. None of the parties or the products involved in the present actions were involved in MDL No. 2231, and these cases include unrelated allegations of unacceptable levels of arsenic. Further, these actions involve distinct proposed classes, and there is no risk of inconsistent rulings on class certification since MDL

* Judge Kathryn H. Vratil and Judge Marjorie O. Rendell took no part in the decision of this matter.

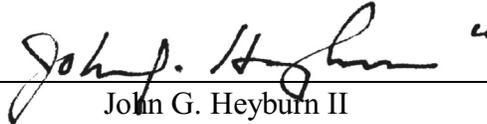
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No. 2231 was resolved at an early stage in the proceedings. Motions to dismiss the present actions likely will involve some common issues with the motion to dismiss decided in MDL No. 2231. However, given that these cases involve unique parties, alleged classes, products, and claims, we see little benefit to re-opening the litigation merely to apply the transferee court's reasoning to the present actions. These actions can be more efficiently and fairly resolved in their original jurisdictions, and those district courts may find guidance from the transferee judge's previous ruling, where applicable. Accordingly, after considering all argument of counsel, we find that this action does not share sufficient questions of fact with previously centralized actions to warrant inclusion in MDL No. 2231, nor would inclusion serve the convenience of the parties and witnesses or promote the just and efficient conduct of the actions.

We further find that creation of a new MDL for these two actions is not necessary. These actions involve disparate defendants, products, and proposed classes. In such circumstances, movants have not met their burden of demonstrating the need for centralization of such a minimal number of actions. *See, e.g., In re Transocean Ltd. Sec. Litig.*, 753 F. Supp. 2d 1373, 1374 (J.P.M.L. 2010).

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

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II

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