

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: COUNTRYWIDE FINANCIAL CORP.  
MORTGAGE-BACKED SECURITIES LITIGATION**

MDL No. 2265

**ORDER VACATING CONDITIONAL TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiff in this Western District of Texas action (*FDIC/RBS*) moves to vacate our order that conditionally transferred this action to MDL No. 2265. Defendant RBS Securities Inc. (RBS) opposes the motion to vacate and favors inclusion of this action in MDL No. 2265.

After considering all argument of counsel and consulting with the transferee judge, we conclude that inclusion of this action in MDL No. 2265 is not necessary to achieve the just and efficient conduct of the litigation. The actions encompassing MDL No. 2265 share factual questions arising from allegations that Countrywide and affiliated defendants misrepresented to investors in Countrywide mortgage-backed securities (MBS) origination practices for, and the credit quality of, the mortgage loans Countrywide originated from 2004 to 2007. *See In re: Countrywide Fin. Corp. Mortgage-Backed Sec. Litig.*, 812 F. Supp. 2d. 1380, 1382 (J.P.M.L. 2011).

Plaintiff argues that *FDIC/RBS* does not share sufficient questions of fact with MDL No. 2265 because (1) the MBS at issue in this action were not issued by Countrywide, though they were backed entirely by Countrywide loans; and (2) Countrywide is not named as a defendant. Plaintiff therefore argues that the action will focus on allegations of misrepresentations by RBS, not Countrywide. Like the MDL No. 2265 plaintiffs, plaintiff here alleges misstatements “about such material facts as the loan-to-value ratios of the mortgage loans, the extent to which appraisals of the properties that secured the loans were performed in compliance with professional appraisal standards, the number of borrowers who did not live in the houses that secured their loans (that is, the number of properties that were not primary residences), and the extent to which the entities that made the loans [(i.e., Countrywide)] disregarded their own standards in doing so.” Am. Petition ¶ 2. We conclude, however, that the status of proceedings in this docket weighs against transfer.

As we have previously observed, “multidistrict litigation is not static.” *See* MDL No. 1769, *In re: Seroquel Prods. Liab. Litig.*, Order Vacating Conditional Transfer Order, at 1 (J.P.M.L. Feb. 5, 2010). The relative merits of transferring new tag-along actions to an MDL can change over time as the transferee court completes its primary tasks, and at a certain point the benefits of transfer should not be assumed to continue. *See id.* The MDL No. 2265 transferee court has issued key substantive rulings and has approved a class action settlement for many of the actions comprising

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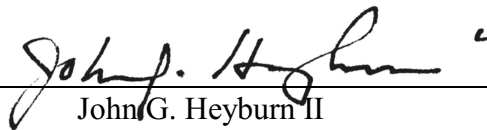
\* Judge Ellen Segal Huvelle took no part in the decision of this matter.

-2-

the litigation. We are of the opinion that proceedings in this MDL have advanced to the point that the continued transfer of related actions is no longer necessary to achieve the purposes of 28 U.S.C. § 1407.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-21" is vacated insofar as it relates to this action.<sup>1</sup>

PANEL ON MULTIDISTRICT LITIGATION



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John G. Heyburn II  
Chairman

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

Charles R. Breyer  
Sarah S. Vance

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<sup>1</sup> We will further direct the Clerk of the Panel to issue an order suspending the parties' obligation under Panel Rule 7.1(a), requiring notification of potential tag-along actions.

**IN RE: COUNTRYWIDE FINANCIAL CORP.  
MORTGAGE-BACKED SECURITIES LITIGATION**

MDL No. 2265

**SCHEDULE A**

Western District of Texas

FEDERAL DEPOSIT INSURANCE CORPORATION v. MERRILL LYNCH PIERCE  
FENNER & SMITH, INC., ET AL., C.A. No. 1:14-00126