

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: IMPRELIS HERBICIDE MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY LITIGATION**

MDL No. 2284

TRANSFER ORDER

Before the Panel: Plaintiff in the action (*Ekiert*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2284. Defendant E.I. du Pont de Nemours and Company (DuPont) opposes the motion to vacate.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2284, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Like many of the already-centralized actions, *Ekiert* involves factual questions regarding DuPont's development, marketing, sale, and performance of Imprelis herbicide and its alleged propensity to harm certain coniferous trees. *See In re: Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, 825 F. Supp. 2d 1357, 1359 (J.P.M.L. 2011).

In support of her motion to vacate, plaintiff argues that (1) unique questions of fact predominate relating to plaintiff's allegation that there was a second application of Imprelis occurring after the Environmental Protection Agency's issuance of a stop sale order; (2) the action involves unique issues of New Hampshire state law; and (3) a determination of damages will be unique to this action. We do not find these arguments convincing.

Like actions already in MDL No. 2284, *Ekiert* involves allegations that Imprelis was applied to plaintiff's property and resulted in damage to trees on her property. The action thus implicates common factual questions concerning the development, testing, and marketing of Imprelis and its capacity to cause tree damage. Moreover, the Panel has long held that Section 1407 transfer does not require a complete identity or even a majority of common factual or legal issues. *See, e.g., In re: Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1376, 1378 (J.P.M.L. 2007). Plaintiff's New Hampshire state claims are not unique, as we earlier transferred similar claims to this MDL. *See Transfer Order (Depietri)*, MDL No. 2284 (J.P.M.L. Aug. 13, 2014) (ECF No. 393). Finally, all of the centralized actions likely will require a unique calculation of damages. That is true of the actions in almost any product liability MDL. Such individualized issues do not preclude transfer. *See In re: Cook Medical, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 949 F. Supp. 2d 1373, 1375 (J.P.M.L. 2013).

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IT IS THEREFORE ORDERED that the *Ekiert* action is transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the Honorable Gene E.K. Pratter for inclusion in the coordinated or consolidated pretrial proceedings.

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

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MDL No. 2284

SCHEDULE A

District of New Hampshire

EKIERT v. E.I. DUPONT DE NEMOURS AND CO., C.A. No. 1:14-00528