

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:* Pursuant to Panel Rule 7.1, plaintiffs in this District of New Hampshire action (*Depietri*), listed on Schedule A, move to vacate our order that conditionally transferred their action to MDL No. 2284. Defendant E.I. du Pont de Nemours and Company (DuPont) opposes the motion to vacate and favors inclusion of this action in MDL No. 2284.

After considering all argument of counsel, we find that *Depietri* shares questions of fact with actions in this litigation previously transferred to the Eastern District of Pennsylvania, and that transfer of this action to MDL No. 2284 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Plaintiffs do not dispute that, like the previously centralized MDL No. 2284 actions, *Depietri* involves allegations against DuPont regarding the development, marketing, sale, and performance of Imprelis 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 the motion to vacate, plaintiffs argue that (1) they learned of the alleged damage after the time to opt out of the settlement class in MDL No. 2284 had passed; (2) MDL No. 2284 is sufficiently advanced that transfer will not promote the just and efficient conduct of the litigation; and (3) their action involves unique issues of New Hampshire law. We do not find these arguments persuasive. Plaintiffs acknowledge that they have not opted out of the class settlement and argue they were not able to participate in the proceedings in MDL No. 2284. As plaintiffs have not opted out of the settlement, they are either class members and may be entitled to relief under the settlement or, if they do not fit within any class definition in the settlement, are free to pursue their claims against DuPont. We are not persuaded that the status of proceedings in MDL No. 2284 weighs against transfer. There are numerous opt-out actions still pending in MDL No. 2284 and, as proceedings were stayed in the transferee court during settlement negotiations, *Depietri* and the MDL No. 2284 opt-out cases are in relatively the same procedural posture. Transfer, therefore, is beneficial “because of the efficiencies from the transferee court’s management of overlapping actions . . . , and the court’s expertise in the issues.” Transfer Order at p. 2, n.4, MDL No. 1720 (J.P.M.L. Oct. 16, 2013); *see also* Transfer Order (*Trainor*), MDL No. 2284 (J.P.M.L. Feb. 14, 2014).

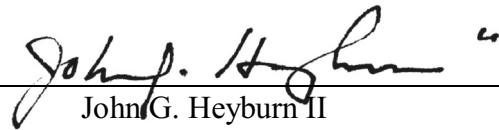
* Judge Ellen Segal Huvelle took no part in the decision of this matter.

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Plaintiffs' New Hampshire state law claims should not preclude transfer. 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).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this 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 occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



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

MDL No. 2284

SCHEDULE A

District of New Hampshire

DEPIETRI, ET AL., v. E.I. DUPONT DE NEMOURS AND COMPANY,
C.A. No. 1:14-00191