

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

Joseph E. Trainor, Sr., et al. v. Ritenour Custom Lawn)	
Care, Inc., et al., W.D. Pennsylvania,)	MDL No. 2284
C.A. No. 2:13-01561)	

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in this Western District of Pennsylvania action (*Trainor*) 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 *Trainor* 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. Like the previously centralized MDL No. 2284 actions, *Trainor* 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) venue is improper in the Eastern District of Pennsylvania; (2) *Trainor* was improperly removed to federal court; (3) transfer would inconvenience plaintiffs; and (4) plaintiffs have timely opted out of the settlement in MDL No. 2284 and seek to pursue their claims independently. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present such arguments to the transferee judge.¹ *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Moreover,

* Judge Paul J. Barbadoro and Judge Lewis A. Kaplan did not participate in the disposition of this matter.

¹ Under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand or other motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so. Indeed, the Western District of Pennsylvania has denied plaintiffs' motion to remand without prejudice and stayed the action.

-2-

venue considerations do not limit the Panel's authority to transfer under Section 1407. *See In re: Peanut Crop Ins. Litig.*, 342 F. Supp. 2d 1353, 1354 (J.P.M.L. 2004).

The Panel has held that, while it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re: Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001). The transferee judge is in the best position to structure proceedings so as to minimize inconvenience to any individual party.

Finally, that plaintiffs have opted out of the MDL No. 2284 settlement does not weigh against transfer. *See* Transfer Order, MDL No. 1720, at p. 2, n.4 (J.P.M.L. Oct. 16, 2013) ("The Panel has long recognized that transfer of opt-out actions to the MDL addressing the proposed class settlement is desirable because of the efficiencies from the transferee court's management of overlapping actions, integration of existing discovery with discovery in the new actions, and the court's expertise in the issues.") (citing *In re: Pennsylvania Life Co. Secs. Litig.*, 436 F. Supp. 406 (J.P.M.L. 1977)). There are a number of other opt-out actions pending in the MDL that share many questions of fact with *Trainor*. Transfer will promote the just and efficient conduct of the actions remaining in this litigation.

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



John G. Heyburn II
Chairman

Marjorie O. Rendell
Sarah S. Vance

Charles R. Breyer
Ellen Segal Huvelle