

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

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

Howard Manard v. E.I. du Pont de Nemours and Company, )  
E.D. Wisconsin, C.A. No. 2:13-00246 ) MDL No. 2284

TRANSFER ORDER

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiff in this Eastern District of Wisconsin action (*Manard*) moves to vacate our order that conditionally transferred his 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 *Manard* 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, *Manard* 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, plaintiff argues that this action was improperly removed and the Eastern District of Wisconsin should be allowed to rule on plaintiff's motion to remand to Wisconsin state court or, alternatively, the action should be remanded to Wisconsin state court. Section 1407 does not grant the Panel the authority to remand an action to state court. Moreover, 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.<sup>1</sup> *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).

Plaintiff also argues that *Manard* does not share sufficient questions of fact with the actions in MDL No. 2284 because it names Reinders, Inc. as a defendant. The Panel has long held that

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\* Judge Kathryn H. Vratil took no part in the decision of this matter.

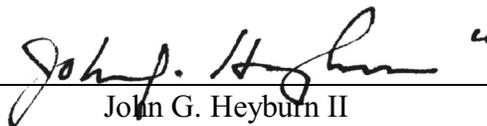
<sup>1</sup> Under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand or other motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so.

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Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. *See, e.g., In re: Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d 1380, 1382 (J.P.M.L. 2008). We are persuaded that the claims against DuPont in this action share sufficient questions of fact with the actions in MDL No. 2284 such that transfer will promote the just and efficient conduct of the 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

A handwritten signature in black ink, reading "John G. Heyburn II", is written above a horizontal line. The signature is cursive and includes a small mark at the end.

John G. Heyburn II  
Chairman

W. Royal Furgeson, Jr.  
Marjorie O. Rendell  
Lewis A. Kaplan

Paul J. Barbadoro  
Charles R. Breyer