

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

Brendan Buckley, et al. v. Ryan Lawn & Tree, Inc.)
W.D. Missouri, C.A. No. 4:12-552)

MDL No. 2284

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs move to vacate our order that conditionally transferred their action to MDL No. 2284. Defendant Ryan Lawn & Tree, Inc. (Ryan Lawn) opposes the motion to vacate and favors inclusion of this action in MDL No. 2284.

This action (*Buckley*) alleges that defendant Ryan Lawn applied the herbicide Imprelis to plaintiffs' lawn and, as a result, several of the trees on plaintiffs' property were injured or destroyed. The actions centralized in MDL No. 2284 involve similar allegations against common defendant E.I. du Pont de Nemours and Company (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 opposing transfer of this action, plaintiffs argue, *inter alia*, that (1) plaintiffs' claims are solely based on a Missouri statute that is not at issue in MDL No. 2284; (2) the *Buckley* action does not name DuPont as a defendant; and (3) causation will not be an issue in the *Buckley* action, as it is in MDL No. 2284, because Ryan Lawn has admitted that Imprelis caused the damage to their trees and plants. Defendant, however, persuasively argues that the Missouri statute at issue in *Buckley* is raised in MDL No. 2284, and the putative class members in *Buckley* are a subset of the putative class asserted in MDL No. 2284. We are persuaded that the *Buckley* action shares sufficient questions of fact with MDL No. 2284 such that transfer is appropriate. Given that common defendant DuPont is currently assuming the defense of Ryan Lawn and defendant's assertion that the extent of any damage to plaintiffs' trees will likely be disputed in *Buckley*, it is almost certain that discovery in the *Buckley* action will overlap with discovery in MDL No. 2284, particularly expert discovery with regard to causation.

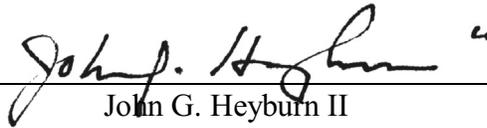
Consequently, after considering all argument of counsel, we find that *Buckley* shares questions of fact with actions in this litigation previously transferred to the Eastern District of Pennsylvania, and that transfer of this action to MDL No. 2284 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.

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

-2-

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

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

Paul J. Barbadoro
Charles R. Breyer