

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: FLUIDMASTER, INC., WATER CONNECTOR
COMPONENTS PRODUCTS LIABILITY LITIGATION**

MDL No. 2575

TRANSFER ORDER

Before the Panel: Defendant Merrimack Mutual Fire Insurance Company in the District of Massachusetts declaratory judgment action listed on Schedule A (*Fluidmaster*) moves under Panel Rule 7.1 to vacate our order conditionally transferring their action to the Northern District of Illinois for inclusion in MDL No. 2575. Plaintiff Fluidmaster, Inc., opposes the motion.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2575, 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. Moreover, transfer is warranted for the reasons discussed in our order directing centralization. In that order, we held that “[a]ll actions involve common factual questions about the allegedly defective nature of Fluidmaster’s NO-BURST water connector product lines. Specifically, plaintiffs allege that the lines fail in one of two ways: (1) the braided stainless steel lines rupture due to the use of substandard materials, or (2) the acetal coupling nut on the water connector fractures as a result of inferior materials and its sharp edged design.” *See In re: Fluidmaster, Inc, Water Connector Components Prods. Liab. Litig.*, 65 F. Supp. 3d 1397 (J.P.M.L. 2014). This action involves damages arising from allegedly defective Fluidmaster water connectors, and the parties do not dispute that it falls within the MDL’s ambit. Moreover, six declaratory judgment actions filed by Fluidmaster are currently pending in MDL No. 2575.

Defendant Merrimack opposes transfer by arguing that it has filed a Maine state court action that covers the Skillins loss (the other loss in the declaratory judgment action – concerning the Bufano property in New Jersey – reportedly is expected to settle). Merrimack argues that the Maine state court case should be allowed to proceed instead of this declaratory judgment action. But “Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case.” *See In re: Ivy*, 901 F. 2d 7, 9 (2d Cir. 1990). Instead, Merrimack can present its argument as to the propriety or desirability of proceeding in state court to the transferee judge.

Merrimack also argues that transfer will inconvenience its Maine-based insureds. We are not persuaded by this argument. In deciding issues of Section 1407 transfer, the Panel looks to the overall convenience of the parties and witnesses in the litigation as a whole.¹ Overall convenience

¹ *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“While we are aware that centralization may pose some inconvenience to some parties, in

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will be served by transfer of this action, given its extensive factual overlap with the other cases pending in MDL No. 2575. Moreover, because Section 1407 transfer is for pretrial proceedings only, usually there is no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. *See In re: Cygnus Telecommunications Tech., LLC, Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that this action is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable Robert M. Dow, Jr., 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

deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

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SCHEDULE A

District of Massachusetts

FLUIDMASTER, INC. v. MERRIMACK MUTUAL FIRE INSURANCE COMPANY,
C.A. No. 1:18-10260