

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: LUMBER LIQUIDATORS CHINESE-MANUFACTURED
FLOORING PRODUCTS MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 2627

TRANSFER ORDER

Before the Panel:* Plaintiffs in the Northern District of West Virginia action (*Gaus*) and District of Nebraska action (*Craig*) listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel's orders conditionally transferring their actions to MDL No. 2627. Defendant Lumber Liquidators, Inc., opposes the motion.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions previously transferred to MDL No. 2627, 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 the Eastern District of Virginia was an appropriate Section 1407 forum for actions sharing factual questions concerning the sale and marketing of Chinese-manufactured laminate flooring sold by defendant Lumber Liquidators. Plaintiffs alleged that their laminate flooring emits illegal and unsafe levels of formaldehyde, a known carcinogen, despite being marketed as compliant with regulations of the California Air Resources Board and other applicable regulations. *See In re: Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation*, 109 F. Supp. 3d 1382 (J.P.M.L. 2015). These actions involve alleged injuries arising from Chinese-manufactured laminate flooring that plaintiffs purchased at Lumber Liquidators, and they clearly fall within the MDL's ambit.

Plaintiffs in *Craig* oppose transfer by arguing that the injuries suffered by plaintiffs – including leukemia – are unique, that transfer will inconvenience plaintiffs and their counsel, and that the MDL is nearing completion. We do not find these arguments convincing. Judge Trenga recently established a separate track for cases involving personal injuries allegedly caused by exposure to excessive levels of formaldehyde. Plaintiffs previously brought their Nebraska state law claims in a Missouri state court, which undercuts their convenience arguments. Moreover, in deciding issues of Section 1407 transfer, the Panel looks to the overall convenience of the parties

* Judge Lewis A. Kaplan did not participate in the decision of this matter.

-2-

and witnesses in the litigation as a whole.¹ Finally, though a Memorandum of Understanding was reached in October 2017 to settle the class claims in this MDL, the settlement has not been finalized.

Plaintiffs in *Gaus* argue – for the second time before the Panel, following their dismissal of a previous action transferred to the MDL over their similar objections – that (1) their action is unique because it centers on specific allegations that the local West Virginia Lumber Liquidators salesman who sold them their flooring falsely stated that it was not the type involved in the 60 Minutes episode that spurred the MDL litigation, and (2) transfer will be inconvenient to their local witnesses and counsel. While some aspects of *Gaus* may be unique, plaintiffs also seek damages for “fear of disease for themselves and their own fear that their children may develop disease,” Compl. at ¶ 13, which implicate factual issues present in many MDL actions. Here, overall convenience will be served by transfer of *Gaus*, given its extensive factual overlap with the approximately 130 cases pending in MDL No. 2627. Moreover, “since Section 1407 transfer is for pretrial proceedings only, there is usually 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). Plaintiffs also oppose transfer by arguing that their action should be remanded to state court, but arguments concerning the propriety of federal jurisdiction are insufficient to warrant vacating the conditional transfer order.² Plaintiffs can present their motion to remand to the transferee court.

IT IS THEREFORE ORDERED that these actions are transferred to the Eastern District of Virginia and, with the consent of that court, assigned to the Honorable Anthony J. Trenga for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

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 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.”).

² 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).

**IN RE: LUMBER LIQUIDATORS CHINESE-MANUFACTURED
FLOORING PRODUCTS MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 2627

SCHEDULE A

Northern District of West Virginia

GAUS, ET AL. v. LUMBER LIQUIDATORS, INC., ET AL., C.A. No. 5:17-177

District of Nebraska

CRAIG, ET AL. v. LUMBER LIQUIDATORS, INC., C.A. No. 8:17-480