

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 listed on the attached Schedule A (*Gaus*), move under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring the action to MDL No. 2627. Defendant Lumber Liquidators, 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. 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). This action involves allegations regarding formaldehyde emissions from Chinese-manufactured laminate flooring that plaintiffs purchased at Lumber Liquidators, and it clearly falls within the MDL’s ambit.

Plaintiffs oppose transfer by arguing that (1) their action is unique because it turns on specific allegations that the local West Virginia Lumber Liquidators salesperson 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. We are not persuaded by these arguments. *Gaus* has extensive factual overlap with the approximately 125 cases pending in MDL No. 2627. 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 Here, in light of the significant

* Judge Marjorie O. Rendell did not participate in the decision of this matter.

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 (continued...)”)

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facts alleged in *Gaus* that are common to the MDL proceedings, overall convenience will be served by transfer. 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 because their motion to remand *Gaus* to state court is pending. But plaintiffs can present their motion to the transferee judge.² *See, e.g., In re: Ivy*, 901 F. 2d 7, 9 (2nd Cir. 1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that this action is 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

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

¹(...continued)

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 Panel Rule 2.1(d) expressly provides that 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 motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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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. 5:17-00040