

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: 100% GRATED PARMESAN CHEESE
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2705

TRANSFER ORDER

Before the Panel:* Plaintiff in the action listed on Schedule A (*Chmielewski*) moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2705. *Chmielewski* is one of four related actions involving the labeling and advertising of Publix Super Markets, Inc. (Publix) “100% Real Grated Parmesan Cheese.”¹ Plaintiffs in two related Publix actions (*Rudder* and *Pellitteri*), who are represented by lead counsel in MDL No. 2705, oppose the motion to vacate and support transfer. Defendant Publix, which initially opposed transfer of the Publix actions to MDL No. 2705, has withdrawn its opposition to transfer.

After considering the argument of counsel, we find that the *Chmielewski* action involves common questions of fact with the actions transferred to MDL No. 2705, 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 this litigation. Like many of the already-centralized actions, *Chmielewski* alleges that a company selling a product labeled “100%” grated parmesan cheese deceived consumers by including significant amounts of cellulose as filler in the products. *See In re: 100% Grated Parmesan Cheese Mktg. and Sales Practices Litig.*, — F. Supp. 3d —, 2016 WL 3190426 (J.P.M.L. June 2, 2016).

In support of the motion to vacate, plaintiff argues that his action does not involve common questions of fact with the actions transferred to the MDL because the sole defendant – Publix – is not a defendant in any of the MDL actions, and he asserts factual and legal issues unique to Publix’s store brand “100% Real Grated Parmesan Cheese.” Plaintiff’s premise that Publix is not a defendant in the MDL is incorrect, as three Publix actions were transferred to MDL No. 2705 after plaintiff filed his motion to vacate. Those actions make substantially the same allegations against Publix as to the same product on behalf of putative nationwide classes that overlap with the proposed class in

* One or more Panel members who could be members of the putative classes in this litigation have renounced their participation in these classes and have participated in this decision.

¹ The three other actions involving Publix (*Rudder*, *Pellitteri*, and *Tamayo*) were placed on conditional transfer orders in October 2016. The actions were transferred to MDL No. 2705 on December 12, 2016, following Publix’s withdrawal of its opposition to transfer.

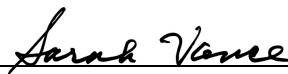
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Chmielewski.² In deciding to include differing brands of “100%” grated parmesan cheese products and defendants in MDL No. 2705, the Panel rejected similar arguments that product-specific differences in labeling, marketing, and manufacturing practices would outweigh the benefits of a single, multi-product MDL, given the actions’ common factual core.³

Plaintiff further argues that transfer to a distant forum will be inconvenient for the parties and will delay resolving his action. We are sympathetic to plaintiff’s concerns of inconvenience and delay, but they do not justify denial of transfer. While it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable Gary Feinerman 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

² The transferee court recently began coordinating pretrial proceedings in those actions, including the filing of a consolidated class action complaint against Publix and a motion to dismiss.

³ *See In re: 100% Grated Parmesan Cheese Mktg. and Sales Practices Litig.*, 2016 WL 3190426, at *2 (J.P.M.L. June 2, 2016) (“Although the advocates of separate MDLs have identified certain product-specific issues, Section 1407 does not require a complete identity of factual issues or parties as a prerequisite to transfer, and the presence of additional facts is not significant when the actions arise from a common factual core. We are confident that the transferee judge can accommodate any issues involving the different products and defendants . . . in a manner that guarantees the just and efficient resolution of all cases.”) (citation omitted).

**IN RE: 100% GRATED PARMESAN CHEESE
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2705

SCHEDULE A

Middle District of Florida

CHMIELEWSKI v. PUBLIX SUPER MARKETS, INC., C.A. No. 8:16-02725