

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: DOLLAR GENERAL CORP. MOTOR OIL
MARKETING AND SALES PRACTICES
LITIGATION**

MDL No. 2709

TRANSFER ORDER

Before the Panel:* The State of Mississippi, *ex rel.* Jim Hood, Attorney General, moves under Panel Rule 7.1 to vacate our order that conditionally transferred the State’s action listed on Schedule A to the Western District of Missouri for inclusion in MDL No. 2709. Defendants Dollar General Corporation and Dolgencorp, LLC, oppose the motion.

Preliminarily, the State argues that the transferor court should decide its pending motion for remand. As we regularly hold, such jurisdictional issues do not present an impediment to transfer. The State can present its jurisdictional arguments to the transferee judge.¹ *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).

Next, the State argues that unique factual issues in its enforcement action will predominate over any common factual issues with the consumer class actions now pending in MDL No. 2709. Like the actions in the MDL, however, the State alleges that Dollar General engaged in deceptive and misleading marketing practices by positioning its motor oil products immediately adjacent to more expensive brand name motor oils intended for modern vehicles and failing to adequately warn customers that its motor oil products are unsuitable for use with most modern vehicles. Similarly, the State, like plaintiffs in the MDL, alleges that Dollar General’s marketing and sale of its motor oil products violates state consumer protection statutes (albeit Mississippi’s statute has not yet been asserted in the MDL). Accordingly, there will be common discovery, and there exists a risk of duplicative discovery and inconsistent pretrial rulings absent centralization. That the State’s enforcement action will include unique elements, such as its request for statutory penalties, is of no moment—the presence of additional or differing legal theories is not significant when the actions

* 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 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. Here, the transferor court has stayed the State’s action pending our decision on transfer.

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arise from a common factual core. *See In re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359, 1360 (J.P.M.L. 2008).

We often have centralized state enforcement actions with private actions where those actions involve common factual questions. *See, e.g.*, Transfer Order at 1-2, *In re Auto Body Shop Antitrust Litig.*, MDL No. 2557 (J.P.M.L. Dec. 12, 2014), ECF No. 306 (transferring enforcement action brought by the State of Louisiana to MDL involving private antitrust actions alleging industry-wide conduct to suppress reimbursement rates for automobile collision repair shops); Transfer Order at 1-2, *In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, MDL No. 2428, at 1-2 (J.P.M.L. Jun. 4, 2014), ECF No. 660 (rejecting Mississippi Attorney General's argument that state action should not be centralized with actions brought by individuals). Such transfer is appropriate here not only because of the existence of common factual questions shared by the State's action and the consumer class actions in the MDL, but because a similar state enforcement action already is pending in MDL No. 2709. On October 4, 2017, we transferred an enforcement action brought against Dollar General by the State of New Mexico (which shares the same outside counsel as the State of Mississippi). *See* Transfer Order, *In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig.*, MDL No. 2709 (J.P.M.L. Oct. 4, 2017), ECF No. 61. These two enforcement actions will share common factual and legal questions, most immediately with respect to the States' remand arguments, as Dollar General asserts nearly identical bases for removal of both actions. Thus, significant efficiencies can be gained through transfer of the State's action.

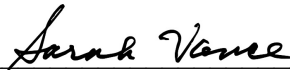
Finally, we are not persuaded that transfer will inconvenience the State in any meaningful way. This MDL to date has not required a great many in-person appearances in Missouri, as the discovery has been conducted directly between the parties, and depositions have been taken at locations convenient to the witnesses. Furthermore, the State has retained as its outside counsel the same law firm that is serving as plaintiffs' lead counsel in the MDL.

Therefore, after considering the argument of counsel, we find that the State's action involves common questions of fact with the actions transferred to MDL No. 2709, 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. In our order centralizing this litigation, we held that the Western District of Missouri was an appropriate Section 1407 forum for actions sharing factual questions arising from Dollar General's marketing and sales of certain company-branded motor oils designed for use with automobile engines manufactured before 1988 (the DG SAE 10W-30 and DG SAE 10W-40 products), or 1930 (the DG SAE 30 product). Plaintiffs in the MDL uniformly allege that Dollar General failed to adequately warn that these motor oil products are not suitable for use in most modern automobile engines. *See In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig.*, 190 F. Supp. 3d 1361, 1362 (J.P.M.L. 2016). The State similarly alleges that Dollar General's motor oil products are deceptively marketed.

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Western District of Missouri and, with the consent of that court, assigned to the Honorable Gary A. Fenner for 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
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**IN RE: DOLLAR GENERAL CORP. MOTOR OIL
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SCHEDULE A

Southern District of Mississippi

STATE OF MISSISSIPPI v. DOLLAR GENERAL CORP., ET AL.,
C.A. No. 3:17-00801