

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: DOMESTIC DRYWALL ANTITRUST
LITIGATION**

MDL No. 2437

TRANSFER ORDER

Before the Panel: Plaintiff moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action listed on the attached Schedule A (*Home Depot*) to the Eastern District of Pennsylvania for inclusion in MDL No. 2437. Defendant Lafarge North America Inc. opposes the motion and supports transfer.

After considering the argument of counsel, we conclude that this action shares questions of fact with the actions transferred to MDL No. 2437 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. Plaintiff does not dispute that its action shares questions of fact with MDL No. 2437. Like many of the already-centralized actions, *Home Depot* involves factual questions arising from an alleged conspiracy to fix the price of drywall products sold in the United States. *See In re: Domestic Drywall Antitrust Litig.*, 939 F. Supp. 2d 1371 (J.P.M.L. 2013). The transferee court has presided over substantial discovery and expert testimony, and issued significant pretrial rulings on discovery disputes and dispositive motions.¹ These common pretrial proceedings in the MDL undoubtedly will serve the just and efficient conduct of the *Home Depot* action.

In opposing transfer, plaintiff contends that the litigation in MDL No. 2437 is too far advanced for this action to benefit from transfer. Plaintiff asserts that discovery is complete, all actions but one have settled, and thus there allegedly are no efficiencies to be gained from transfer. Plaintiff further contends that *Home Depot* can benefit from the work completed in the MDL by, for example, making use of the common discovery taken in the MDL. Defendant Lafarge points out that Home Depot will involve discovery with respect to competitively sensitive information already subject to protective orders in the MDL and that significant pretrial motions relevant to the Home Depot claims against Lafarge remain pending.

On this record, we conclude that, while the MDL undoubtedly is at an advanced stage, transfer of *Home Depot* is appropriate. Whether the continued inclusion of tag-along actions is appropriate is based upon a review of the status of the MDL proceedings and an assessment of the relative merits of transferring additional cases. *See In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F. Supp. 2d 1371, 1372 (J.P.M.L. 2009). Our review of the record leads us to conclude that transfer of *Home Depot* would serve the efficient resolution of this litigation. The

¹ *See, e.g., In re: Domestic Drywall Antitrust Litig.*, 163 F. Supp. 3d 175 (E.D. Pa. 2016).

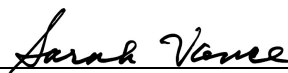
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transferee judge has overseen substantial pretrial proceedings concerning the alleged conspiracy in MDL No. 2437 since 2013, including significant rulings on dispositive motions and discovery disputes. Thus, he remains in the best position to streamline discovery and motions practice in the new action in light of the discovery and motions practice that have been completed. He also can ensure the just and efficient resolution of common motions concerning defendant Lafarge, the alleged coconspirators, and other nonparties with relevant information.

Home Depot's further contention that transfer would be inconvenient for Home Depot and its witnesses is unavailing. The Panel looks to "the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation." *See, e.g., In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1352 (J.P.M.L. 2012).

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the Honorable Michael M. Baylson for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

**IN RE: DOMESTIC DRYWALL ANTITRUST
LITIGATION**

MDL No. 2437

SCHEDULE A

Northern District of Georgia

HOME DEPOT U.S.A., INC. v. LAFARGE NORTH AMERICA INC.,
C.A. No. 1:18-cv-02839