

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:* Defendant LL Flooring, Inc. (f/k/a Lumber Liquidators, Inc.), moves under Section 1407(c) to transfer the Central District of California action (*Stein*) listed on the attached Schedule A to the Eastern District of Virginia for inclusion in MDL No. 2627. Plaintiff 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 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). Plaintiff in *Stein* brings wrongful death claims in connection with alleged injuries her daughter suffered arising from Lumber Liquidators Chinese-manufactured laminate flooring, which plaintiff alleges emitted excessive levels of formaldehyde. This action clearly falls within the MDL's ambit.

This case has a long history. Prior to the filing of the current action, decedent Tiffany Stein brought her own action for personal injuries in the MDL, and the action (which had proceeded through expert discovery) was dismissed following her death in October 2018. *See generally Tiffany Stein v. Lumber Liquidators*, E.D. Virginia, C.A. No. 1:16-cv-2794. To prevent prejudice to defendant, the transferee judge added conditions to his Rule 41(a)(2) dismissal order: “any future action by or on behalf of the Estate of Tiffany Stein against [LL Flooring] must be filed in the United States District Court for the Eastern District of Virginia or other federal district court and the plaintiff in that future action must not oppose transfer to this MDL Proceeding.” *Id.*

* Judges Nathaniel M. Gorton, David C. Norton, and Roger T. Benitez took no part in the decision of this matter.


doc. 226 at 1. The current *Stein* wrongful death action is brought on behalf of decedent's mother, not the decedent's estate. But plaintiff here makes substantially similar allegations to those in the previous action regarding injuries decedent suffered that allegedly were caused by formaldehyde-emitting flooring.

Plaintiff opposes transfer for three reasons. First, she stresses that she does not bring claims on behalf of her late daughter's estate, so the transferee judge's previous dismissal order does not apply to her claims. Second, she argues that she does not seek recovery for personal injuries to the decedent but instead for her own loss of relations with the decedent. Finally, plaintiff argues that transfer of this California-based case is inconvenient to all parties except defendant, which prefers litigating in its home district. These arguments do not weigh heavily against transfer in these circumstances. The underlying facts of the current *Stein* action are without doubt related to the core controversy of the MDL. The *Stein* personal injury action proceeded from its filing in September 2016 through expert discovery until plaintiff died in October 2018, which suggests that the transferee judge will be familiar with the allegations in the current wrongful death action.

In his order dismissing the personal injury claims, the transferee judge clearly expressed his concern that LL Flooring would suffer prejudice and placed limits on future actions brought by or on behalf of plaintiff's estate to prevent such prejudice. That the current wrongful death action is brought by decedent's mother, a surviving heir (who was not a party to the initial action and was not before the court), and not the decedent's estate is an irrelevant distinction, given the extensive factual overlap with the MDL cases. If plaintiff is concerned about the personal inconvenience of traveling to the Eastern District of Virginia, that likely will not be needed, "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). If, however, the transferee judge does not view presiding over *Stein* as necessary to the action's progress (or if he no longer is concerned about prejudice to defendant), then he can suggest Section 1407 remand and return the action to the Central District of California.

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



Karen K. Caldwell
Chair

Matthew F. Kennelly
Madeline Cox Arleo

Dale A. Kimball

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SCHEDULE A

Central District of California

STEIN v. LL FLOORING, INC., ET AL., C.A. No. 2:22-04736