

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: SAMSUNG TOP-LOAD WASHING MACHINE
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION**

MDL No. 2792

TRANSFER ORDER

Before the Panel:* Plaintiffs move under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring the actions listed on the attached Schedule A (*Kennedy* and *Orenstein*) to the Western District of Oklahoma for inclusion in MDL No. 2792. Defendant Samsung Electronics America, Inc., and plaintiffs in MDL No. 2792 oppose the motion to vacate and support transfer. Samsung represents that the other defendants in the MDL – The Home Depot, Inc.; Best Buy Co., Inc.; Lowe’s Home Centers, LLC; and Sears Holdings Corporation – support inclusion of *Kennedy* and *Orenstein* in the MDL.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions transferred to MDL No. 2792 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. Transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Western District of Oklahoma is an appropriate forum for actions arising out of allegations that certain models of Samsung top-load washing machines suffered from design and manufacturing defects that caused components “such as the top and drain pump, to detach, break apart, or explode.” *See In re: Samsung Top-Load Washing Machine Mktg., Sales Practices and Prods. Liab. Litig.*, 278 F. Supp. 3d 1376, 1377 (J.P.M.L. 2017). Plaintiffs in *Kennedy* and *Orenstein* acknowledge that the Samsung washing machines at issue in their putative class actions are a subset of the machines at issue in the MDL, and that their actions also focus on an alleged drain pump defect. Thus, their actions undoubtedly share factual issues with the actions in the MDL.

In support of the motion to vacate, plaintiffs principally argue that their actions are too far advanced in settlement proceedings to benefit from transfer since they reached a class-wide settlement in principle with Samsung over a year ago, the District of New Jersey court recently

* 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. Judge Charles A. Breyer took no part in the decision of this matter.

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granted their motion to enforce the settlement over Samsung's objection,¹ and they have a fully-briefed motion for preliminary approval pending in D. New Jersey. These arguments are unconvincing. The record shows that there is a proposed nationwide class in the MDL that substantially overlaps with the proposed nationwide class settlement in the *Kennedy* and *Orenstein* actions, and they both purport to provide remedies, which differ in many respects, for the same allegedly defective drain pump component. Thus, absent transfer, there is a significant risk of inconsistent rulings as to class certification and waste of judicial resources.

The *Kennedy* and *Orenstein* actions are not too advanced to benefit from transfer. Like the actions in the MDL, they are in a settlement posture and have a motion for preliminary approval pending. Moreover, plaintiffs in the MDL have opposed the preliminary approval motion in *Kennedy* and *Orenstein*, and the *Kennedy* and *Orenstein* plaintiffs have opposed the preliminary approval motion in the MDL. Transfer will ensure that a single judge oversees the common issues raised in these settlement approval proceedings.

The *Kennedy* and *Orenstein* plaintiffs also argue that transfer is improper because it would permit a "collateral attack" on the District of New Jersey enforcement order and interfere with judicial comity. This argument, too, is unconvincing. Plaintiffs essentially speculate about what will happen after transfer, but this is not an appropriate consideration in deciding the question of transfer. The Panel does not consider "[t]he prospect of an unfavorable ruling by the transferee court or the possibility that another district judge may be more favorably disposed to a litigant's contention . . . in exercising its discretion under Section 1407." See, e.g., *In re: Eliquis (Apixaban) Prods. Liab. Litig.*, 282 F. Supp. 3d 1354, 1356 n.4 (J.P.M.L. 2017) (internal quotation marks and citations omitted).²

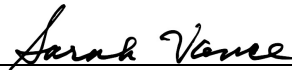
¹ See *Kennedy v. Samsung Electronics America, Inc.*, C.A. No. 14-4987, 2018 WL 2296702 (D.N.J. May 21, 2018).

² The *Kennedy* and *Orenstein* plaintiffs also object that transfer would be unjust because it would allow Samsung to benefit from allegedly improper conduct that took place in the District of New Jersey. Plaintiffs will have the opportunity to raise their concerns about the alleged misconduct to the transferee court, which can address those issues or, if it deems appropriate, remand them to the transferor court for consideration at the conclusion of the common pretrial proceedings.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the Western District of Oklahoma are transferred to the Western District of Oklahoma and, with the consent of that court, assigned to the Honorable Timothy D. DeGiusti for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance

Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

**IN RE: SAMSUNG TOP-LOAD WASHING MACHINE
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION**

MDL No. 2792

SCHEDULE A

District of New Jersey

KENNEDY, ET AL. v. SAMSUNG ELECTRONICS AMERICA, INC.,

C.A. No. 2:14-04987

ORENSTEIN v. SAMSUNG ELECTRONICS AMERICA, INC., C.A. No. 2:15-04054