

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: NEEDHAM EXCAVATING, INC., EMPLOYMENT
RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION**

MDL No. 2883

ORDER DENYING TRANSFER

Before the Panel: Needham Excavating, Inc. (NEI) moves under 28 U.S.C. § 1407 to centralize pretrial proceedings in this litigation in the Southern District of Iowa. The litigation consists of two actions listed on the attached Schedule A: an action in the Southern District of Iowa (in which NEI is the plaintiff) and an action in the Northern District of Illinois (in which NEI is the defendant). Plaintiffs in the Northern District of Illinois action support centralization, but in the Northern District of Illinois.¹

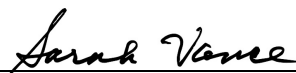
On the basis of the papers filed and the hearing held, we conclude that centralization is not necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of this litigation. These actions share factual issues arising from a dispute concerning a 2018 fringe benefit audit of NEI. The audit allegedly found, *inter alia*, that NEI failed to properly report and remit approximately \$400,000 in contributions to certain employee benefit funds. But there are only two actions, and the factual issues do not appear to be especially complex. In the Iowa action, NEI seeks a declaratory judgment that it is not obligated to pay the amount in question. In the Illinois action, the plaintiffs sue NEI for payment of that amount. In short, the litigation involves a fairly run-of-the-mill business dispute involving only a few parties in only two cases. *See In re: Mansfield Oil Co. of Gainesville, Inc., Contract Litig.*, 672 F. Supp. 2d 1371, 1372 (J.P.M.L. 2010) (denying centralization of three actions pending in two districts, describing them as “involv[ing] a relatively straightforward business dispute among a small number of related parties”).

¹ Plaintiffs are The International Union of Operating Engineers, Local 150, Midwest Operating Engineers Welfare Fund; Midwest Operating Engineers Pension Trust Fund; Operating Engineers Local 150 Apprenticeship Fund; Local 150 IUOE Vacation Savings Plan; Midwest Operating Engineers Retirement Enhancement Fund; and Construction Industry Research and Service Trust Fund.

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IT IS THEREFORE ORDERED that the motion for centralization of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance

Chair

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

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

**IN RE: NEEDHAM EXCAVATING, INC., EMPLOYMENT
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SCHEDULE A

Northern District of Illinois

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150,
AFL-CIO, ET AL. v. NEEDHAM EXCAVATING, INC., C.A. No. 1:18-08045

Southern District of Iowa

NEEDHAM EXCAVATING, INC. v. TRUSTEES OF THE INTERNATIONAL UNION
OF OPERATING ENGINEERS LOCAL 150, ET AL., C.A. No. 3:18-00116