

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 2913

TRANSFER ORDER

Before the Panel: Plaintiffs in four actions (*Bentley*, *State of Illinois*, *Beyer*, and *Chaney*) and defendant Schwartz E-Liquid LLC (Schwartz) in a fifth action (*May*) separately move under Panel Rule 7.1 to vacate our orders conditionally transferring the actions to the Northern District of California for inclusion in MDL No. 2913. The actions are listed on the attached Schedule A. Defendant JUUL Labs, Inc. (JLI) opposes all five motions to vacate. Defendants Altria Group, Inc., and Philip Morris USA Inc., which are sued only in *Bentley*, oppose the motion as to that action.

After considering the argument of counsel, we find that these five actions involve common questions of fact with actions transferred to MDL No. 2913, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions in the MDL share factual questions arising from allegations that “JLI has marketed its JUUL nicotine delivery products in a manner designed to attract minors, that JLI’s marketing misrepresents or omits that JUUL products are more potent and addictive than cigarettes, that JUUL products are defective and unreasonably dangerous due to their attractiveness to minors, and that JLI promotes nicotine addiction.” See *In re Juul Labs, Inc., Mktg., Sales Practices & Prods. Liab. Litig.*, 396 F. Supp. 3d 1366, 1367 (J.P.M.L. 2019). Plaintiffs and defendant Schwartz do not dispute that their actions implicate those same questions.

In arguing against transfer, moving plaintiffs all cite the pendency of remand motions in their actions. The Panel consistently has held, however, that jurisdictional objections are not an impediment to transfer. *E.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) (noting that “remand motions can be presented to and decided by the transferee judge,” and that transferor courts wishing to rule on such motions generally “have adequate time to do so”). The assertions of the *Chaney* and *State of Illinois* plaintiffs that transfer would cause them inconvenience or delay the progress of their actions are unavailing. The Panel considers the convenience of the parties and witnesses as a whole in deciding the issue of transfer. See *In re Watson Fentanyl Patch Prods Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[I]n deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just th[at] of a single plaintiff or defendant in isolation.”).

The *State of Illinois* plaintiff’s argument that its action is a government enforcement action that implicates sovereignty concerns is not persuasive. The Panel routinely transfers such actions

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under Section 1407.¹ *See, e.g., In re Facebook, Inc., Consumer Privacy User Profile Litig.* (MDL No. 2843), Transfer Order (J.P.M.L. Oct. 5, 2018) (ECF No. 165) (transferring action over the objections of the state plaintiff). And the Panel has rejected the argument that a sovereign entity should not be subject to Section 1407 transfer because transfer might impinge on its ability to be represented by its chosen counsel. *See In re Nat'l Prescription Opiate Litig.* (MDL No. 2804), Transfer Order at 2 (J.P.M.L. Apr. 5, 2018) (ECF No. 1134) (transferring action brought by a Native American tribe and noting that, “[p]laintiff’s counsel can ask to join the MDL leadership and, of course, plaintiff may keep its own lawyers throughout the proceeding”). Although there may be some issues unique to *State of Illinois*, discovery in the action and the other actions in the MDL will overlap significantly. Transfer thus almost certainly will produce efficiencies. And, of course, if the transferee judge at some point determines that the action should proceed outside the MDL, he is free to suggest Section 1407 remand.

Defendant Schwartz’s arguments against transfer of *May* are not convincing. Like plaintiffs already in the MDL, the *May* plaintiff alleges that because of defendants’ “deceptive, false and misleading claims in its advertising,” he purchased and used defendants’ products “without being advised that they were highly addictive and contained hazardous toxic chemicals and posed a severe health risk.” *May* Compl. ¶ 29. The presence of additional defendants in the action does not bar transfer, because “[t]ransfer under Section 1407 does not require a complete identity of parties.” *In re U.S. Office of Personnel Mgmt. Data Sec. Breach Litig.*, 138 F. Supp. 3d 1379, 1380 (J.P.M.L. 2015). Other e-cigarette companies, including Eonsmoke, LLC, Imperial Brands, and Reynolds American Inc., already are defendants in the MDL. In any event, the seemingly indivisible nature of plaintiff’s claims renders a partial transfer (*i.e.*, transferring only plaintiff’s claims against JLI and separating and remanding the claims against the other defendants) impracticable. The transferee judge has the discretion to employ separate tracks or other appropriate pretrial techniques to address any issues specific to the non-JLI defendants, including confidentiality concerns such as those raised by Schwartz. *See In re Proton-Pump Inhibitor Prods. Liab. Litig. (No. II)*, 261 F. Supp. 3d 1351, 1354 (J.P.M.L. 2017). The *May* plaintiff’s allegation that he developed “popcorn lung” through use of defendants’ products also does not warrant vacatur, because, as JLI points out, a number of actions in the MDL involve allegations of serious health complications, including lung injuries.² Finally, we reject Schwartz’s argument that *May* should not be transferred because Schwartz’s insurance policy may not cover its MDL-related defense costs. The Panel generally does not consider a party’s ability to fund the prosecution or defense of an action in determining the propriety of Section 1407 transfer. *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.* (MDL No. 2158), Transfer Order at

¹ The State of Illinois is not the only governmental entity to have sued JLI. The MDL already includes actions brought by numerous school districts and school boards; the City of Rochester, New Hampshire; Frederick County, Maryland; Montgomery County, Maryland; and Skagit County, Washington.

² Indeed, the initial case census being conducted in the MDL includes a question regarding the specific injuries suffered by the subject plaintiff, and the proffered list of possible responses includes “‘Popcorn lung’/bronchiolitis obliterans,” as well as stroke, heart attack, acute interstitial pneumonitis, and lung transplant. *See* Case Mgmt. Order No. 2—Initial Case Census, Ex. A at 7 (N.D. Cal. Nov. 19, 2019) (ECF No. 262).

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1 (J.P.M.L. Feb. 7, 2013) (transferring action over plaintiffs' objection that litigating in the MDL would "result in their incurring additional burden and expense").

IT IS THEREFORE ORDERED that the five actions listed on Schedule A are transferred to the Northern District of California, and, with the consent of that court, assigned to the Honorable William H. Orrick III for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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SCHEDULE A

Northern District of Alabama

BENTLEY v. JUUL LABS, INC., ET AL., C.A. No. 5:19-01313
MAY v. JUUL LABS, INC., ET AL., C.A. No. 6:19-01794

Northern District of Illinois

PEOPLE OF THE STATE OF ILLINOIS, ET AL. v. JUUL LABS, INC.,
C.A. No. 1:19-06301

Eastern District of Missouri

BEYER, ET AL. v. JUUL LABS, INC., ET AL., C.A. No. 4:19-02772

Southern District of Ohio

CHANEY v. JUUL LABS, INC., ET AL., C.A. No. 2:19-04145