

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: SMITTY'S/CAM2 303 TRACTOR HYDRAULIC FLUID
MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

MDL No. 2936

ORDER DENYING REMAND

Before the Panel:* Plaintiff in the action listed on Schedule A (*Nationwide Agribusiness Insurance Co.*), which previously was transferred from the Eastern District of Louisiana to the Western District of Missouri District for inclusion in MDL No. 2936, moves under Panel Rule 10.3 for an order remanding the action to the Eastern District of Louisiana. Defendant Smitty's Supply, Inc. ("Smitty's") opposes the motion.

After considering the argument of counsel, we conclude that remand is not appropriate at this time, and therefore deny plaintiff's motion. In considering the question of Section 1407 remand, we accord great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, given that he or she has supervised the day-to-day pretrial proceedings in the MDL. See *In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977). A transferee judge's suggestion of remand to the Panel, see Panel Rule 10.1(b), indicates that the judge perceives his or her role under Section 1407 to have ended. See *In re Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008) (quoting *In re Holiday Magic*, 433 F. Supp. at 1126). Here, the transferee judge has denied plaintiff's request for such a suggestion because additional pretrial proceedings remain with respect to summary judgment motions. See *Nationwide Agribusiness Ins. Co. v. Smitty's Supply Co.*, No. 21-0071, Doc. No. 129 (W.D. Mo. July 18, 2022) ("Order Denying Suggestion of Remand"). We have reviewed the record and find that it amply supports the transferee judge's determination.

This MDL involves consumer class actions against Smitty's involving certain of its tractor hydraulic fluid ("THF") products and related insurance coverage actions. The coverage actions seek a judicial declaration as to Nationwide's rights and obligations under insurance policies issued to defendants Smitty's and CAM2 with respect to coverage for costs incurred, or to be incurred, as a result of the actions being litigated in MDL No. 2936 and in an earlier settled action (*Hornbeck*) also involving these TFH products. See MDL No. 2936, Transfer Order, Doc. No. 69, at 1-2 (J.P.M.L. Feb. 5, 2021) ("*Nationwide* Transfer Order"). We refer to the coverage action involving *Hornbeck* as the *Hornbeck* Coverage Action, and the coverage action involving the

* Judge Madeline Cox Arleo did not participate in the decision of this matter.

actions in MDL No. 2936 as the MDL Coverage Action. Plaintiff Nationwide seeks remand of the *Hornbeck* Coverage Action.

In support of remand, Nationwide principally argues that (1) discovery is complete in the *Hornbeck* Coverage Action; (2) there are no efficiencies to be gained from the transferee court ruling on the pending summary judgment motions; (3) the *Hornbeck* Coverage Action involves case-specific insurance coverage issues; and (4) the *Hornbeck* Coverage Action can be handled more expeditiously and efficiently in the transferor court. These arguments are unpersuasive. First, the transferee judge considered these arguments and determined that “good cause does not exist to remand this case prior to the conclusion of pretrial proceedings,” noting that summary judgment motions remain to be resolved. *See* Order Denying Suggestion of Remand at 2. He further determined that “[r]emand at this stage of the litigation will only delay the resolution of this case and risk inconsistent rulings related to common issues of fact and law between this case, the underlying MDL, and the other consolidated insurance declaratory judgment action, *Nationwide v. Smitty’s Supply Inc.*, 21-cv-00072-SRB [the MDL Coverage action].” *See id.*

We agree that common issues of fact and law remain between the MDL consumer actions, the *Hornbeck* Coverage Action, and the MDL Coverage Action. As the Panel explained in transferring both Coverage Actions to the MDL, “the Coverage Actions, like the MDL actions, on their face put at issue whether the defendants had knowledge of the alleged defects in Smitty’s 303 THF products; if so, when they attained such knowledge; and the nature of the damages allegedly caused by the products.” *See Nationwide* Transfer Order at 1-2. The Panel further explained that Smitty’s knowledge of the alleged defects is relevant to the MDL consumer plaintiffs’ claims for fraudulent misrepresentation and request for punitive damages, and also appeared to be “directly relevant, at a minimum, to the exclusions for ‘known risk’ and ‘prior knowledge’ in the Coverage Actions.” *See id.* at 2. Moreover, the insureds in the Coverage Actions are the principal defendants in the MDL. We have reviewed the record and found that none of these considerations have changed. Given this overlap, Judge Bough reasonably determined that continued inclusion of the *Hornbeck* Coverage Action in the MDL is appropriate to avoid inconsistent rulings.

The alleged efficiencies to Nationwide of litigating the *Hornbeck* Coverage Action outside the MDL also are unpersuasive. Centralization is based on “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, 1351-52 (J.P.M.L. 2012) (“While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”). Here, the interests of the just and efficient conduct of the litigation overall are best served by the continued inclusion of the *Nationwide* action in the MDL for resolution of the motions for summary judgment.

Nationwide also argues before the Panel that remand is warranted because of concerns about the transferee judge’s impartiality. But those are issues for a recusal motion, which Nationwide has not filed. Moreover, it is not the Panel’s role to act on a recusal motion or conduct appellate review of pretrial proceedings in an MDL. *See In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on Apr. 20, 2010 (No. II)*, 961 F. Supp. 2d 1355, 1357 (J.P.M.L. 2013) (“The Panel does not aspire to the role of an appellate court for disaffected MDL litigants.

We are neither authorized by statute nor inclined to act in such a role.”). If a litigant is aggrieved by rulings in the MDL, it can seek appellate relief in the appropriate circuit.

IT IS THEREFORE ORDERED that the motion for Section 1407 remand is denied.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script that reads "Karen K. Caldwell". The signature is written in black ink and is positioned above a horizontal line.

Karen K. Caldwell

Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez

**IN RE: SMITTY'S/CAM2 303 TRACTOR HYDRAULIC FLUID
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SCHEDULE A

Western District of Missouri

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY v. SMITTY'S SUPPLY, INC.,
ET AL., C.A. No. 4:21-00071
(Eastern District of Louisiana, C.A. No. 2:20-02890)