

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: SIMPLY ORANGE ORANGE JUICE
MARKETING AND SALES PRACTICES
LITIGATION**

Betty Moss v. The Coca-Cola Company,)
W.D. Arkansas, C.A. No. 4:12-04073)

MDL No. 2361

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff in a Western District of Arkansas action moves to vacate our order that conditionally transferred her action to MDL No. 2361. Defendant The Coca-Cola Company opposes the motion.

After considering all argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2361, and that transfer 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 set out in our order directing centralization. In that order, we held that the Western District of Missouri was an appropriate Section 1407 forum for actions sharing factual questions arising out of allegations that not-from-concentrate orange juice produced and sold by Simply Orange, a subsidiary of The Coca-Cola Company, is deceptively marketed as “100% Pure Squeezed Orange Juice,” when in fact the orange juice is extensively processed. This action involves virtually identical allegations arising from plaintiff’s purchase of Simply Orange not-from-concentrate orange juice, and thus falls squarely within the subject matter of the MDL.

Plaintiff bases her argument against transfer exclusively on the pendency of a motion to remand her action to state court, suggesting that the transferor court should first decide the motion. We have repeatedly held, however, that a motion for remand alone is generally an insufficient basis to deny centralization of an action.¹ Plaintiff can present her motion for remand to the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

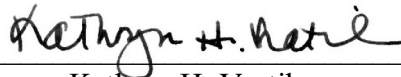
* Judge John G. Heyburn II took no part in the decision of this matter.

¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon the remand motion generally has adequate time in which to do so.

-2-

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Western District of Missouri and, with the consent of that court, assigned to the Honorable Fernando J. Gaitan, Jr., for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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