

**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

TRANSFER ORDER

Before the Panel: Plaintiff Nationwide Agribusiness Insurance Company (“Nationwide”) moves under Panel Rule 7.1 to vacate the order conditionally transferring the actions on Schedule A (“the Coverage Actions”) to the Western District of Missouri for inclusion in MDL No. 2936. Defendants Smitty’s Supply, Inc. (“Smitty’s”), CAM2 International, LLC (“CAM2”), and Tractor Supply Company (“Tractor Supply”) oppose the motion to vacate and support transfer. Plaintiffs’ Lead Counsel in MDL No. 2936 filed an interested party brief also opposing the motion to vacate and supporting transfer.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions transferred to MDL No. 2936, 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. The actions in MDL No. 2936 involve factual questions arising from allegations concerning the manufacture, labeling, marketing, and performance of Smitty’s 303 tractor hydraulic fluid (THF) products, including those made for and sold by CAM2.¹ *See In re Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices and Prods. Liab. Litig.*, 466 F. Supp. 3d 1380, 1381 (J.P.M.L. 2020). The actions commonly allege that defendants Smitty’s, CAM2, Tractor Supply, and certain other retailers “(1) deceptively marketed the products as meeting John Deere 303 specifications . . . ; (2) misrepresented the products’ anti-wear and protective benefits; and (3) used inferior ingredients such as used oils and diluted additives that caused damage to plaintiffs’ equipment.” *Id.* The Coverage Actions seek a judicial declaration as to Nationwide’s rights and obligations under insurance policies issued to Smitty’s, CAM2, and Tractor Supply with respect to coverage for costs incurred, or to be incurred, as a result of the litigation over the Smitty’s 303 THF products at issue in MDL No. 2936 and an earlier settled action referred to as *Hornbeck*.² Moreover, the Coverage Actions, like the MDL actions, on their

¹ The products at issue are Super S Supertrac 303 Tractor Hydraulic Fluid; Super S 303 Tractor Hydraulic Fluid; CAM2 ProMax 303 Tractor Hydraulic Oil; and CAM2 303 Tractor Hydraulic Oil. *See* 466 F. Supp. 3d at 1381 n.2.

² We refer to the coverage action involving *Hornbeck* as the *Hornbeck* Coverage Action, and the Coverage Action involving the actions in MDL No. 2936 as the MDL Coverage Action.

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.

In deciding whether to include a declaratory judgment insurance action in centralized proceedings, we have held that "probably the most important consideration" is whether "the insurance coverage actions require and rely on the same factual discovery as the underlying tort actions." See *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, ECF No. 257, at 1 (J.P.M.L. June 15, 2010). Conversely, "actions that present strictly legal questions which require little or no centralized discovery" are not appropriate for transfer. *Id.* Thus, "[i]ncluding declaratory judgment insurance actions in an MDL will always depend on the particular facts and circumstances of the litigation." See *In re Oil Spill By the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 764 F. Supp. 2d 1352, 1353 (J.P.M.L. 2011) (transferring declaratory judgment insurance actions to the MDL where "the insurance policies involve[d] coverage issues at the core of the MDL").

Here, both the *Hornbeck* Coverage Action and the MDL Coverage Action likely will require discovery of factual issues that are at the core of MDL No. 2936 – specifically, (1) whether defendants had knowledge that the 303 THF products were defective or could cause property damage; and (2) whether the products caused property damage. Defendants' knowledge of the alleged defect and potential for damage appears to be directly relevant, at a minimum, to the exclusions for "known risk" and "prior knowledge" in the Coverage Actions and, in the MDL, is directly relevant to plaintiffs' claims of fraudulent misrepresentation and request for punitive damages. Moreover, the insureds in the Coverage Actions are the principal defendants in the MDL. Determining what defendants knew, and when, likely will involve discovery of defendants' employees and corporate representatives, which is ongoing in the MDL.

In opposition to transfer, plaintiff Nationwide argues primarily that (1) the predominant issues in the Coverage Actions are questions of law that relate to interpretation of the insurance policies; (2) the *Hornbeck* Coverage Action, in particular, is not appropriate for transfer because the underlying *Hornbeck* action was never part of the MDL; and (3) transfer would be inefficient and prejudicial because the Coverage Actions will take a "distant back seat" to the class actions in the MDL, and be delayed by the MDL's class certification and product liability proceedings.


We find Nationwide's arguments unpersuasive. First, while Nationwide's actions undoubtedly raise legal questions concerning policy interpretation, they additionally raise factual questions that squarely put in issue defendants' knowledge of the alleged product defect and causation of property damages. Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. *In re Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d 1380, 1382 (J.P.M.L. 2008). Second, the *Hornbeck* Coverage Action involves the same allegedly defective products as the products in the MDL – that is, Smitty's 303 tractor hydraulic fluid products. Thus, the factual questions concerning defendants' knowledge of the alleged product defect and property damage issues are the same, even though *Hornbeck* was not a constituent action in the MDL. Third, Nationwide's assertions of inefficiency and delay are speculative. There are nine actions pending in the MDL, and they remain at a relatively early stage, with fact discovery in progress. Additionally, the Panel

repeatedly has held that “the transferee judge may account, at his discretion, for any differences among the actions by using appropriate pretrial devices, such as separate tracks for discovery or motion practice.” See *In re Valsartan Prods. Liab. Litig.*, 433 F. Supp. 3d 1349, 1352 (J.P.M.L. 2019). Nationwide’s concerns about delay and inefficiency are essentially case management concerns appropriate to raise with the transferee court for resolution. See, e.g., *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018) (observing that concerns about “litigation delays” in the MDL were essentially case management concerns and “[i]t is incumbent upon the parties to bring their concerns to the attention of the transferee court and to propose ways to resolve them”).

Nationwide additionally suggests that the Panel stay its decision on the motion to vacate pending resolution of a motion in the Coverage Actions seeking dismissal for improper venue or transfer under Section 1404. We see no reason to stay our decision. The issues relevant to Section 1407 transfer have been fully briefed and the motion to vacate is ripe for decision.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Western District of Missouri and, with the consent of that court, assigned to the Honorable Stephen R. Bough for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION


Karen K. Caldwell

Chair

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SCHEDULE A

Eastern District of Louisiana

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY v. SMITTY'S
SUPPLY, INC., ET AL., C.A. No. 2:20-02890

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY v. SMITTY'S
SUPPLY, INC., ET AL., C.A. No. 2:20-02892