

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

JUN 16 2005

FILED
CLERK'S OFFICE**DOCKET NO. 1616****BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE URETHANE ANTITRUST LITIGATION***Seegott Holdings, Inc. v. Bayer AG, et al.*, D. New Jersey, C.A. No. 2:04-5850*Alco Industries, Inc. v. Bayer AG, et al.*, D. New Jersey, C.A. No. 2:05-789**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR., KATHRYN H. VRATIL* AND DAVID R. HANSEN, JUDGES OF THE PANEL****TRANSFER ORDER**

Now before the Panel are two motions, pursuant to 28 U.S.C. § 1407, brought by the same four companies: BASF Corp., Bayer Corp., The Dow Chemical Co., and Huntsman International LLC. Movants ask the Panel to transfer two District of New Jersey actions (*Seegott* and *Alco*) as tag-along actions to be included in MDL-1616, which is now pending in the District of Kansas before Judge John W. Lungstrum.¹ Joining in support of the request for inclusion of these two actions in MDL-1616 are the lead plaintiffs in the MDL-1616 actions in the transferee district. Opposed to transfer are i) Crompton Corp. and Uniroyal Chemical Co. (two companies that are named as defendants in MDL-1616 actions but are not among the defendants in the two New Jersey actions now before the Panel), ii) the *Seegott* and *Alco* plaintiffs, and iii) the plaintiff in a related action recently filed in the District of New Jersey (see note 1, *supra*).

On the basis of the papers filed and hearing session held, the Panel finds that *Seegott* and *Alco* involve common questions of fact with actions in this litigation previously transferred to the District of Kansas, and that transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and

*Judges Motz and Vratil took no part in the disposition of this matter.

¹The first Section 1407 motion filed by these movants also pertained to one Northern District of California action, *Green Mountain International, Inc. v. BASF Corp., et al.*, C.A. No. 3:04-513. The question of Section 1407 transfer with respect to that action, however, was mooted by the April 29, 2005 voluntary dismissal of the action. The same movants now before the Panel subsequently filed a third Section 1407 transfer motion that pertained to an Eastern District of Pennsylvania action, *RBX Industries, Inc. v. Bayer Corp., et al.*, C.A. No. 2:05-1045. The question of this action's transfer was similarly mooted when the action was voluntarily dismissed on March 31, 2005. The plaintiff in this Pennsylvania action subsequently brought a new action in the District of New Jersey, *RBX Industries, Inc. v. The Dow Chemical Co., et al.*, C.A. No. 2:05-1788. Certain responding parties have suggested that this new New Jersey action should also be transferred by the Panel. No motion has been filed with respect to this action, however, and thus the action is not now before the Panel. In view of the Panel's disposition of the matter now before it, this New Jersey action will be treated as a potential tag-along action in accordance with the Panel's Rules. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

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witnesses and promote the just and efficient conduct of the litigation. The Panel is persuaded that transfer of the actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the District of Kansas was a proper Section 1407 forum for actions brought by persons allegedly injured by a conspiracy to fix and maintain the prices of urethane and urethane chemicals. *See In re Urethane Antitrust Litigation*, 333 F.Supp.2d 1379 (J.P.M.L. 2004).

Opponents to transfer of *Seegott* and *Alco* argue that the actions should not be transferred because the actions do not share sufficient questions of fact with the previously centralized MDL-1616 actions. In particular, opponents contend that *Seegott* and *Alco* involve different products and a separate price-fixing conspiracy. Supporters of transfer, on the other hand, maintain that the differences between the urethane products and chemicals in MDL-1616 and the urethane products and chemicals in *Seegott* and *Alco* are distinctions without a difference for the purpose of common Section 1407 pretrial proceedings. Transfer under Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. The products at issue in *Seegott* and *Alco* are components of urethane and/or urethane chemicals. Transfer under Section 1407 will thus permit these two actions and the previously centralized MDL-1616 actions to proceed before a single transferee judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs, while ensuring that common parties and witnesses are not subjected to discovery demands which duplicate activity that will occur or has already occurred in any of the actions. The transferee court remains free, of course, to formulate a pretrial program that allows any non-common discovery or other unique pretrial matters in these two actions to proceed on a separate track concurrently with proceedings common to the other MDL-1616 actions. *See In re Accutane Products Liability Litigation*, 343 F.Supp.2d 1382, 1383 (J.P.M.L. 2004). It may also be, on further refinement of the issues and close scrutiny by the transferee judge, that these two actions (or claims therein) can be remanded in advance of the other actions in the transferee district. But we are unwilling, on the basis of the record before us, to make such a determination at this time with respect to these actions. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.*

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the District of Kansas and, with the consent of that court, assigned to the Honorable John W. Lungstrum for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



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Chairman

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