

**BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT  
LITIGATION**

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IN RE: BABY FOOD MARKETING, SALES  
PRACTICES AND PRODUCT LIABILITY  
LITIGATION

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MDL No. 2997

**PLAINTIFFS ERIK LAWRENCE, RACHEL M. FRANTZ, AND MARIE MEZILE’S  
INTERESTED PARTY RESPONSE IN SUPPORT OF MOTION TO CENTRALIZE  
THE BABY FOOD CASES IN THE EASTERN DISTRICT OF NEW YORK**

Plaintiffs Erik Lawrence, Rachel M. Frantz, and Marie Mezile respectfully submit their interested party response in support of the centralization motion filed by plaintiffs Lori-Anne Albano, Myjorie Philippe, Rebecca Telaro, and Alyssa Rose on March 8, 2020. (Doc. No.1)<sup>1</sup>

**PRELIMINARY STATEMENT**

The sixty-plus baby food lawsuits allege the same thing—that defendants knew their baby food contained unsafe amounts of heavy metals, but failed to disclose this fact to people purchasing the products to feed their babies and infants. A contaminated baby food MDL is warranted because the §1407 requirements are satisfied and fundamental issues necessary to resolve the claims will not vary among the defendants or the plaintiffs.

**ARGUMENT IN SUPPORT OF CENTRALIZATION**

The requirements for transfer under 28 U.S.C. §1407 are met here because: 1) there are civil actions pending in different districts that have one or more common questions of fact; 2) centralization will be for the convenience of the parties and witnesses; and 3) centralization will promote the just and efficient conduct of the actions.

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<sup>1</sup> Plaintiffs filed *Erik Lawrence, et al. v. Hain Celestial Group, et al.*, Case 1:21-cv-01287 (E.D.N.Y.).

The most efficient way to handle the baby food cases—for the defendants, the plaintiffs, and the judicial system—is to create one MDL managed by a single judge. This approach worked very well in the *Automotive Parts Antitrust Litigation*, MDL No. 2311, where the Panel turned what could have been scores of separate cases brought by purchasers at different levels of the distribution chain against different parts manufacturers in districts scattered across the country into a unitary MDL capably managed by Judge Battani.<sup>2</sup>

The genesis of MDL No. 2311 occurred in September 2011, when the Department of Justice announced that a motor vehicle parts manufacturer (Furukawa) had agreed to plead guilty to conspiring to fix prices of wire harnesses. Civil antitrust cases were filed against Furukawa and other wire harness manufacturers by direct and indirect purchasers. Motions to centralize the actions were filed with the Panel. Creation of an MDL in the Eastern District of Michigan was advocated by most of the parties in the cases. The Panel agreed, and centralized the wire harness cases in the Eastern District of Michigan. *In re Automotive Wire Harness Sys. Antitrust Litig.*, MDL No. 2311, 2012 WL 432596 (J.P.M.L. Feb. 7, 2012).

Soon after Furukawa's guilty plea, other parts suppliers began to plead guilty to fixing prices of other motor vehicle parts. These guilty pleas led to additional civil cases being filed by purchasers of these products.<sup>3</sup> Motions to create separate MDL dockets for the cases asserting antitrust (and consumer protection) claims against producers of these parts were then filed with the Panel.

On May 31, 2012, the Panel held a hearing on the motions to create multidistrict litigation dockets for three new parts cases. The Panel decided that the cases involving these

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<sup>2</sup> MDL No. 2311 was reassigned to Judge Cox because Judge Battani had to step away from her duties and eventually retire for health reasons.

<sup>3</sup> Many additional guilty pleas and civil cases with respect to other parts were to come.

products should be transferred to the Eastern District of Michigan and Judge Battani, but declined the request to create three new MDLs. *In re Automotive Parts Antitrust Litig.*, 867 F. Supp. 2d 1349, 1350-51 (J.P.M.L. June 12, 2012).

The Panel's reluctance to create multiple MDL dockets was not overcome by arguments "that the cases in each MDL involve a separate alleged conspiracy that will involve facts, time frames, parties and witnesses specific to that alleged conspiracy." *Id.* The Panel concluded that "including all actions in MDL No. 2311 will lead to the most efficient handling of these cases." *Id.*<sup>4</sup>

Part of what drove the Panel's decision was that the government was investigating anticompetitive conduct in one industry, even though it was composed of scores of suppliers producing thousands of parts. The final paragraph of the Panel's June 12, 2012 Transfer Order renaming the "*Wire Harness Systems Antitrust Litigation*" as "*In re Automotive Parts Antitrust Litigation*" clearly expressed the Panel's intent to not just include wire harness products, instrument panel cluster, fuel sender, and heater control panel cases with some overlapping defendants under an umbrella automotive parts MDL, but also any future cases involving different automotive parts and parties. The Panel's decision to create one MDL was designed to and in fact achieved excellent results—a just and efficient resolution of multiple cases filed in different districts that revolved around widespread collusion in the automotive parts industry. The rationale employed by the Panel in automotive parts is equally applicable here.

The practices of an entire industry were also under scrutiny in *In re Factor VIII or IX Concentrate Blood Prods. Prod. Liability Litig.*, MDL No. 986, 853 F. Supp. 454 (J.P.M.L. Dec.

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<sup>4</sup> The Panel noted that the transferee court had tools at its disposal to most efficiently manage cases involving different parts within the framework of MDL No. 2311. *In re Automotive Parts Antitrust Litig.*, 867 F. Supp. 2d at 1351.

7, 1993) (“*Factor Concentrate*”). Factor concentrates were products, made from human blood plasma, used by persons with hemophilia to control internal bleeding. The plasma used to make factor concentrates eventually became contaminated with the human immunodeficiency virus (“HIV”). Factor concentrates made with contaminated plasma then became tainted with HIV. Users of factor concentrates were infected with HIV from use of contaminated factor concentrates.

Hemophiliacs infected with HIV sued the four major factor concentrate producers in several districts. An MDL motion was granted, and the factor concentrate cases were centralized in the Northern District of Illinois before Judge Grady. The Panel identified the following common factual questions as supporting §1407 centralization: 1) the adequacy of the defendants’ testing of plasma used to make factor concentrates for the presence of HIV or other viruses; 2) the adequacy of the defendants’ screening of high-risk plasma donors; and 3) the adequacy of the defendants’ warnings to hemophiliacs and their physicians of the dangers of HIV transmission through use of factor concentrates. *Id.* at 455. Over the objections of the defendants, the Panel concluded that centralization of all the factor concentrate cases in one district was necessary to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel, and the judiciary. *Id.* *Factor Concentrates*, where plaintiffs alleged that the entire industry failed to properly test, screen, or warn, is analogous to the allegations about the conduct of the baby food defendants.

Litigation against opiate manufacturers and distributors was centralized in the Northern District of Ohio. *In re National Prescription Opiate Litig.*, MDL No. 2804, 290 F. Supp. 3d 1375 (J.P.M.L. Dec. 5, 2017). The Panel decided that a single MDL was warranted even though

[t]he parties opposing transfer stress the uniqueness of the claims they bring (or the claims that are brought against them), and they argue that

distributors will lead to inefficiencies that could slow the progress of all cases. While we appreciate these arguments, we are not persuaded by them. All of the actions can be expected to implicate common fact questions as to the allegedly improper marketing and widespread diversion of prescription opiates into states, counties and cities across the nation, and discovery likely will be voluminous. Although individualized factual issues may arise in each action, such issues do not—especially at this early stage of litigation—negate the efficiencies to be gained by centralization.

*Id.* at 1378-79.

The Panel has established MDLs in circumstances where different defendants produced an allegedly defective product. For example, the Panel decided that cases against Chinese drywall manufacturers whose products allegedly released sulfur gases, which corroded metal appliances and components in homes and also caused headaches, and respiratory and skin ailments, should be combined in one pretrial proceeding. *In re Chinese-Manufactured Drywall Products Liability Litig.*, MDL No. 2047, 626 F. Supp. 2d 1346 (J.P.M.L. June 15, 2009).

Another example is *In re Takata Airbag Products Liability Litig.*, MDL No. 2599, 84 F. 3d 1371 (J.P.M.L. Feb. 5, 2015). Takata made different airbags for major automobile manufacturers. Owners of vehicles equipped with Takata airbags alleged that the airbags exploded, sending metal shards into the passenger compartments of the affected vehicles. Plaintiffs sued Takata and the vehicle manufacturers in districts across the country. Ordering centralization in the Southern District of Florida, the Panel explained that

[t]hese actions—all of which are putative nationwide class actions—share factual questions arising from allegations that certain Takata-manufactured airbags are defective in that they can violently explode and eject metal debris, resulting in injury or even death. Plaintiffs allege that Takata and the various motor vehicle manufacturer defendants became aware of the defect years ago, but concealed their knowledge from safety regulators and the public. Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings on class certification and other issues, and conserve the resources of the parties, their counsel, and the judiciary.

*Id.* at 1372.

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