BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: SPRAY POLYURETHANE FOAM INSULATION LITIGATION	:	**MDL DOCKET NO. _____**

BRIEF IN SUPPORT OF PLAINTIFF LUCILLE RENZI'S MOTION FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF FLORIDA PURSUANT TO 28 U.S.C. §1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

Plaintiff Lucille Renzi, with the concurrence of Plaintiffs Bruce and Judy Haas, Christopher and Loretta Albanese, Neil and Kristine Markey, Kevin Hecker, David and Lauren Schraeder, Joel and Anna Lisa Stegink, and Daniel and Paula Slemmer, seeks a transfer of actions to the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. §1407. The Southern District of Florida is where two of the current eight federal actions are pending, and one which is an appropriate choice for the transferee district for the actions. Transfer of the actions to that district will best serve the just and efficient conduct of this litigation, preserve judicial resources, prevent potential conflicting rulings and be more convenient for the parties and potential witnesses.

FACTUAL BACKGROUND

Plaintiff Lucille Renzi is the named class representative in a putative class action filed in the United Stated District Court for the Southern District of Florida, alleging tortious manufacture, distribution, marketing, labeling, installation, and/or inspection of Spray Polyurethane Foam (hereinafter, "SPF") by defendants Demilec, Masco Corporation, Masco Services Group Corp., Masco Contractor Services, Builder Services Group, Gale Insulation, and Abisso Abatement, Inc. The case bears the caption Lucille Renzi v. Demilec (USA), LLC, Masco Corporation, Masco Services Group Corp. a/k/a Masco Contractor Services, Builder

Services Group d/b/a Gale Insulation, and Abisso Abatement, Inc. d/b/a Abisso Construction, Case No. 9:12-cv-80516. The action was filed on May 14, 2012. The defendants have since filed their answer, and the parties have filed their Joint Scheduling Report and Discovery Plan. As per the Discovery Plan, Plaintiffs and Masco Defendants have filed their initial disclosures, and the Defendants are producing corporate representatives on the issues of corporate structures and insurance coverage on December 19, 2012.

The case alleges that the defendants engaged in the tortious manufacture, distribution, marketing, labeling, installation, and/or inspection of hazardous SPF. Defendants failed to adequately warn consumers of the dangerous design and manufacture of this toxic product, and instead fraudulently marketed the SPF as being safe and "green." However, once installed in consumers' homes, the SPF emitted volatile organic compounds (hereinafter, "VOCs") and continued to "off-gas," creating serious health hazards to the occupants of the homes. The only remedy is to fully remove the SPF from consumers' homes; an expensive and invasive process which often times requires large portions of homes, if not the entire homes, to be completely rebuilt.

The Haas case is one of a group of existing and anticipated tag-along actions which seek relief against various SPF manufacturers, installers, distributors, and sellers, allegedly engaging in the identical conduct at issue in Renzi. Substantially identical class actions have also been filed in the Southern District of Florida, bearing the captions Bruce and Judy Haas v. Demilec, (USA), LLC, Masco Corporation, Masco Services Group Corp. a/k/a Masco Contractor Services, Builder Services Group, Inc. d/b/a Gale Insulation, and Hovnanian Enterprises, Inc., Case No. 9:12-cv-81160, and other substantially identical class actions are pending in other district courts, including Christopher Albanese and Loretta Albanese v. Demilec (USA), LLC, and U.S.

Insulation Corp., Case No. 3:12-cv-01053, filed in the District of Connecticut; Neil and Kristine Markey v. Lapolla Industries, Inc., Lapolla International, Inc., and Delfino Insulation Company, Inc., Case No. 2:12-cv-04622, filed in the Eastern District of New York; Kevin Hecker v. Demilec (USA), LLC and Wierzba Insulation, LLC, Case No. 3:12-cv-00682, filed in the Western District of Wisconsin; David and Lauren Schraeder v. Demilec (USA), LLC, Energy Improvement Group, LLC, and Energy Improvement Group, d/b/a Foam People, Case No. 2:12-cv-06074, filed in the District of New Jersey; Joel and Anna Lisa Stegink v. Demilec (USA), LLC and Advanced Insulation Technology, LLC, Case No. 1:12-cv-01243, filed in the Western District of Michigan; and, Daniel and Paula Slemmer v. NCFI Polyurethanes and McGlaughlin Spray Foam Insulation, Inc., Case No. 2:12-cv-06542, filed in the Eastern District of Pennsylvania. The Renzi, Haas, Albanese, Markey, Hecker, Schraeder, Stegink, and Slemmer matters propose nationwide classes. The currently pending federal actions are listed and summarized on Exhibit 1 attached to this brief.

ARGUMENT

A. The SPF Insulation Litigation is a Perfect Fit for MDL Treatment

These actions, which allege that the SPF defendants engaged in identical unlawful conduct, present a perfect situation for an MDL transfer. Multiple class actions, making substantially identical allegations against multiple SPF defendants and seeking to certify overlapping and duplicative classes, are now pending in federal courts throughout the country, with additional such actions anticipated. The actions filed thus far propose essentially identical nationwide classes. All of the actions were filed in 2012 and none are in the advanced stages of the litigation process. All of the requirements for transfer under §1407(a) are met, and all of the

material factors compel the conclusion that MDL treatment would be the most efficient means of ensuring adequate, uniform, and efficient administration of the actions.

B. Transfer Under §1407(a) Will Promote the Just and Efficient Conduct of the Actions

1. There are numerous class actions proposing overlapping and duplicative classes filed in different districts

The MDL procedures were designed specifically for circumstances such as this SPF Insulation litigation. The Panel has frequently granted transfer where numerous class actions were filed in different federal districts. Indeed, the Panel has often granted transfers in situations where fewer pending class actions than those involved herein were at issue. *See, e.g.,* *In re* Maytag Corp. Neptune Washer Products Liability Litigation, 33 F.Supp.2d 1382, 1382-83 (J.P.M.L 2004) (ordering transfer of three putative class actions pending in three districts); *In re* canon U.S.A., Inc. Digital Camera Products liability Litigation, 416 F.Supp.2d 1369, 1370-71 (J.P.M.L. 2006) (ordering the transfer of two putative class actions and one potential tag-along action pending in two districts).

All of the actions in question seek certification of nationwide classes. The potential for overlapping or conflicting class actions "presents one of the strongest reasons" for transfer under §1407(a). *In re* Plumbing Fixtures, 308 F.Supp.242, 243-44 (J.P.M.L. 1970). Indeed, transfer is favored to ensure consistency of rulings, especially with regard to class certification matters. *In re* Roadway Express, Inc. Employment Practices Litigation, 284 F.Supp 612, 613 (J.P.M.L. 1974). Since several of the actions seek nationwide classes, there are also potentially conflicting claims for class representation, which is recognized as another compelling reason for transfer under section 1407. *See*, *In re* Refrigerant Gas Antitrust Litigation, 334 F.Supp. 996, 997

(J.P.M.L. 1971) ("the conflicting claims to class representation asserted by plaintiffs are additional reasons for our decision [to transfer]").

As the Multidistrict Litigation Manual notes, "[t]he management of the litigation would become exceedingly difficult if similar actions involving overlapping classes were proceeding in different districts." *Multidistrict Litigation Manual* at 144.Thus, a §1407(a) transfer is the only practicable method available to ensure the just and efficient conduct of these actions.

2. There is a likelihood of multiple, conflicting pretrial rulings

The pendency of these class actions containing similar allegations, and with substantially identical and/or overlapping proposed classes, presents the likelihood of multiple, conflicting pretrial rulings on any number of matters, not the least of which is class certification. The pendency of these actions in different districts raises the very real risk that conflicting rulings will result. Moreover, there is a great likelihood of conflicting rulings on discovery motions, motions for protective orders, and other pretrial motions that would lead to differing discovery obligations for the defendants from one action to the next. The likelihood of conflicting pretrial rulings will be eliminated by an MDL transfer. *See, e.g.* *In re* Dow Chemical Co. "Sarabond" Products Liability Litigation, 650 F.Supp. 187, 188 (J.P.M.L. 1986) (transfer granted to, *inter alia*, prevent inconsistent pretrial rulings in actions with common fact questions); *In re* Air Crash at DFW Airport on Aug. 2, 1985, 623 F.Supp. 635, 635 (J.P.M.L. 1985) (transfer granted to, *inter alia*, prevent inconsistent pretrial rulings in cases with common factual questions arising from same air crash.)

3. There is a certainty of duplicative discovery

Given that at least five pending actions are premised upon the same conduct by the same defendant, assert similar or identical causes of action, and seek similar forms of relief, there is a

virtual certainty of duplicative discovery if MDL transfer is not granted. This duplicative discovery would be extremely and needlessly wasteful, burdensome and expensive for the parties. Transfer under §1407(a) would provide centralized management of discovery in the transferee court, thus eliminating the tremendous inefficiencies of duplicative discovery. *In re Fosamax Products Liability Litigation*, 444 F.Supp.2d 1347, 1349 (J.P.M.L. 2006).

4. MDL transfers will conserve the resources of the parties, the judiciary, and counsel

Without a §1407 transfer by the MDL Panel, at least five federal district judges will have to address identical or at the very least similar issues regarding discovery, class certification, and substantive pretrial motions. Conflicting and duplicative schedules would be unavoidable if the separate prosecution of the individual actions occurred because the defendants could not undertake the same activities simultaneously in separate actions. In addition, the pretrial process would take longer and require more resources than a single, coordinated approach. Avoiding the unnecessary waste of resources is the very reason the MDL procedure exists, and compels an MDL transfer under these circumstances. *See, In re* Fosamax, *supra*, 444 F.Supp.2d at 1348-49 (transfer granted to conserve the resources of the parties, their counsel, and the judiciary); *In re* MLR, LLC, Patent Litigation, 269 F.Supp.2d 1380, 1381 (J.P.M.L. 2003) (noting that it is "logical to assume that prudent counsel will combine their forces and apportion their workload," which will promote efficiency and conserve resources).

CONCLUSION

For all of the reasons enumerated above, Plaintiff Lucille Renzi, with the consent of Plaintiffs Bruce and Judy Haas, Christopher and Loretta Albanese, Neil and Kristine Markey, Kevin Hecker, David and Lauren Schraeder, Joel and Anna Lisa Stegink, and Daniel and Paula Slemmer respectfully requests that the Panel issue an Order transferring the actions listed in the

attached Schedule of Actions to the United States District Court for the Southern District of Florida, for coordinated and/or consolidated pretrial proceedings before Judge Kenneth Marra.

Dated: February 27, 2012

Respectfully Submitted,

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