

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

IN RE: ELECTROLUX DRYER)
PRODUCT LIABILITY LITIGATION)
_____)

MDL No. _____

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TRANSFER OF ACTIONS
PURSUANT TO 28 U.S.C. § 1407**

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I. INTRODUCTION

Transfer of the pending Electrolux Cases under 28 U.S.C. § 1407 is appropriate because the cases all arise from the same factual context and involve shared facts and legal issues. In each of the Electrolux cases plaintiffs allege that:

- (1) Electrolux designed, manufactured, distributed and placed into the stream of commerce dryers that had a uniform defect;
- (2) the dryers designed, manufactured, distributed and placed into the stream of commerce by Electrolux were unreasonably dangerous at the time they left the control of Electrolux;
- (3) Electrolux designed, manufactured, distributed and placed into the stream of commerce dryers without adequate warnings about the accumulation of lint in areas not visible to or serviceable by the user;
- (4) Electrolux' conduct in designing, manufacturing, and marketing the dryers fell below the applicable standards of care owed by Electrolux to the plaintiffs;
- (5) Electrolux intentionally or negligently misrepresented, concealed, or suppressed important information regarding the true and known risks of the dryers; and
- (6) Plaintiffs have suffered damages as a result of the defective and unreasonably dangerous dryers designed, manufactured, distributed and placed into the stream of commerce by Electrolux.

These common factual issues predominate all of the Electrolux Cases and make these cases appropriate for transfer, and coordination or consolidation. Indeed, having one court preside over a centralized case will promote orderly pretrial proceedings, provide efficiency for the judiciary and counsel, and result in uniform discovery rulings across all Electrolux Cases, consistent with the goals of the Panel in ordering transfer under 28 U.S.C. § 1407(a).

II. FACTUAL BACKGROUND

From the early 1990s until 2007, Electrolux designed, manufactured, marketed, distributed and placed into the stream of commerce gas and electric clothes dryers with a common design known as the “ball hitch” design. For more than a decade now and throughout the United States, Electrolux has investigated thousands of claims that fires originated in dryers manufactured with its “ball hitch” design.¹ American Family and other insurance companies have paid millions of dollars in property damage claims caused by fires that originated in Electrolux dryers. After engaging experts to analyze the dryers and the fire scenes, American Family and other insurers have filed subrogation lawsuits against Electrolux alleging that a defect in the design of the Electrolux ball hitch dryers caused the dryers to start fires. Specifically, plaintiffs in the Electrolux Cases allege that the design of the Electrolux dryers caused lint to accumulate behind the drum and in the heater pan where it could be ignited by the heat source of the clothes dryer and potentially spread. The lint accumulates in areas that are not visible to, or serviceable by, the end user.

As set forth in Table A1 of the Schedule of Actions, Exhibit 1, lawsuits in federal courts across the United States claim that hundreds of fires were caused by the defective design of Electrolux dryers. In addition, class actions filed by homeowners are pending in the Eastern District of Arkansas and the Central District of California (see Table A2 of the Schedule of Actions, Exhibit 2). Each of these Electrolux Cases arises from a common factual nexus involving a single product and the common course of conduct by the manufacturer of that product. Moreover, several of Electrolux’s employees and outside experts are likely to be

¹ See Exhibit 3 at p. 2.

witnesses in all of the Electrolux Cases and it is expected that plaintiffs may have common expert witnesses.

Almost all of the federal cases that would comprise the *Electrolux Dryer Product Liability Litigation* are at an early stage in the discovery process.² Numerous cases were only recently filed and, moreover, American Family is aware of unfiled cases that will be appropriate for tag-along treatment. Coordinated judicial case management is advantageous, and may be necessary, to avoid a litigation law of attrition over discovery that should be available to all and to eliminate unnecessary discovery delays and disputes. Indeed, the same discovery disputes have already arisen in multiple cases and will likely continue to arise in numerous courts if the Electrolux Cases are not transferred for coordinated pretrial proceedings (see *infra* at p. 9 n. 3).

III. ANALYSIS

A. TRANSFER AND COORDINATION OF THE ELECTROLUX DRYER FIRE CASES IS APPROPRIATE AND NECESSARY

This Panel may transfer cases to a single judicial district for pretrial coordination or consolidation if:

- (1) the cases involve “one or more common questions of fact”;
- (2) transfer would be “for the convenience of parties and witnesses”; and
- (3) transfer would “promote the just and efficient conduct of such actions.”

28 U.S.C. § 1407. “The objective of transfer is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the

² Cases with trials set before November 2013 have been flagged in the Schedule of Actions and may, in the Panel’s discretion, be appropriate for exclusion from transfer. Cases in which personal injury resulted from dryer fires have been similarly flagged for the Panel’s consideration.

parties, the attorneys, the witnesses, and the courts.” *Manual for Complex Litigation, Fourth*, § 20.131 (2004), citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968).

1. The Electrolux Cases Involve Common Questions of Fact.

Because the Electrolux Cases are nearly identical in nature, transfer of the actions under Section 1407(a) is highly appropriate. Indeed, this Panel has previously recognized the appropriateness of coordination or consolidation where multiple actions alleged fire damage caused by the same allegedly defective product. *See In re Celotex Corp. “Technifoam” Products Liability Litigation*, 68 F.R.D. 502, 503 (J.P.M.L. Sept. 16, 1975). In the *Technifoam* litigation, the Panel acted “on its own order to show cause why [the] actions should not be transferred to a single district for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.” *Id.* at 503-04. In issuing its order to show cause, the Panel recognized that each individual action may involve unique factual or legal issues, but held that transfer and coordination of discovery was appropriate because there were “key common factual questions in all the actions pertaining to the flammability hazards posed by Technifoam, Celotex’s knowledge thereof, its subsequent conduct, the adequacy of testing and Celotex’s marketing practices.” *Id.* at 504. Here, where the key common factual questions are nearly identical to those in the *Technifoam* litigation, consolidation is equally appropriate. *See also In re CertainTeed Corp. Roofing Shingle Products Liab. Litig.*, 474 F. Supp. 2d 1357, 1358 (J.P.M.L. 2007) (consolidating actions involving property damage caused by allegedly defective roofing shingles).

Moreover, transfer under 28 U.S.C. § 1407 is appropriate even where one group of plaintiffs have asserted different legal claims. *In re: Merscorp Inc., et al. Real Estate Settlement*

Procedures Act (RESPA) Litig., 560 F. Supp. 2d 1371, 1372 (J.P.M.L. 2008) (where transfer was opposed based upon “unique state law claims,” Panel found transfer proper because “[t]ransfer under Section 1407...does not require a complete identity or even a majority of common factual or legal issues as prerequisite to transfer.”) Thus, even to the extent separate legal claims are involved in actions pending before the various United States District Courts, the presence of those claims should not impede transfer. Indeed, “where actions share factual questions, the Panel has long held that the presence of disparate legal theories is not a basis to deny transfer.” *In re MF Global Holdings Ltd. Inv. Litig.*, 857 F. Supp. 2d 1378, 1380 (J.P.M.L. 2012). Given the common issues of fact involved in the Electrolux Cases, and this Panel’s precedent for transfer in similar cases, consolidation and transfer are appropriate here.

2. Transfer Would Be Convenient for the Parties and Witnesses.

Parties and witnesses in the Electrolux Cases have been juggling schedules in courts from New Hampshire to California. Indeed, Electrolux is defending more than fifty federal cases throughout the country, all of which have the same central allegation. Consolidation will allow the parties to “combine their forces and apportion the workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of inconvenience to all concerned.” *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984). Without centralization, both plaintiffs and Electrolux will be subjected to numerous and potentially disparate decisions on the timing and scope of discovery and other crucial pretrial issues. Allowing the Electrolux Cases to proceed in multiple jurisdictions will, therefore, create needless inconvenience, disruption and a significant burden on all of the parties involved.

Moreover, transfer and coordination will allow expert and lay witnesses with knowledge or opinions that relate to multiple cases to avoid providing repeated deposition testimony on the same topic in multiple venues. Ultimately, as this Panel has recognized previously, “[c]entralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings...and preserve the resources of the parties, their counsel and the judiciary.” *In re Enron Corp. Securities, Derivative*, 196 F. Supp. 2d 1375, 1376 (J.P.M.L. 2002).

3. Transfer Would Promote the Just and Efficient Conduct of the Litigation.

Transfer to a single district court will also “promote the just and efficient conduct” of the Electrolux Cases. 28 U.S.C. § 1407. Coordination will save considerable judicial time because discovery “will undoubtedly overlap and many of the legal issues will turn on similar facts and law.” *In re AT&T Mobility Wireless Data Services*, 710 F. Supp. 2d 1378, 1380 (J.P.M.L. 2010). Asking multiple federal courts to entertain and decide the same discovery motions and pretrial issues serves neither the interests of the parties nor the interests of the federal judiciary. Indeed, coordination is particularly appropriate because Electrolux continues to request discovery in several cases despite judicial decisions in other Electrolux Cases holding that Electrolux is not entitled to that discovery.³ Under the circumstances, a single binding ruling from one federal court would save the parties and the judiciary significant time and resources. In sum, the

³ See Minute Entry, *State Farm Fire and Casualty Company, et al. v. Electrolux Home Products, Inc.*, 1:11-cv-08946 (N.D. Ill) at Exhibit 4 (holding that the requested corporate discovery is not discoverable), Memorandum Opinion and Order, *The Travelers Property Casualty Insurance Company, 1:12-cv-02386* (N.D. Ill), at Exhibit 5 (limiting the corporate discovery to specific areas of inquiry), and Interrogatories to Plaintiff American Family Mutual Insurance Company in its Own Right, Requests for Production of Documents to Plaintiff American Family Mutual Insurance Company in its Own Right, Interrogatories to Country Mutual Insurance Company in its Own Right and Requests for Production of Documents to Country Mutual Insurance Company in its Own Right at Exhibit 6 (requesting the corporate discovery already denied in the *State Farm* and *Travelers* cases).

Electrolux Cases will proceed through discovery more efficiently if transferred to a single district court for coordinated pretrial proceedings.

B. THE ELECTROLUX CASES SHOULD BE TRANSFERRED TO THE NORTHERN DISTRICT OF ILLINOIS

Should the Panel grant American Family's request to transfer pursuant to 28 U.S.C. § 1407, American Family respectfully requests that the Panel transfer the Electrolux Cases to the Northern District of Illinois. The Northern District of Illinois is optimally situated and experienced for handling the Electrolux Cases and is capable of effectively managing a complex litigation like the proposed MDL. Put simply, the Northern District of Illinois is the most appropriate district for consolidation of the Electrolux cases

First, several of the Electrolux Cases, including cases filed by American Family, State Farm Fire and Casualty Company, Allstate Insurance Company and the Travelers Property Casualty Insurance Company, are already pending in the Northern District of Illinois. (See Exhibit 1 at 2-3.) Indeed, one case pending in the Northern District of Illinois already involves more than 200 dryer fire claims from across the country. See Exhibit A to the Complaint in *State Farm Fire and Casualty Company, et al. v. Electrolux Home Products, Inc.*, 1:11-cv-08946 (N.D. Ill). The familiarity of counsel in the Northern District of Illinois cases, together with the familiarity of the judiciary, makes the Northern District of Illinois the most a logical venue for coordination or consolidation under Section 1407.

Second, given the geographic dispersal of those cases not pending in the Northern District of Illinois, centralization of the cases in a metropolitan area that is centrally located will provide convenience to the parties and witnesses. See *In re: Watson Fentanyl Patch Products Liability Litigation*, 883 F.Supp.2d 1350, 1352 (J.P.M.L. 2012) (Northern District of Illinois

provides “a convenient and accessible forum for this litigation in which actions have been filed throughout the country regarding a product marketed nationwide.”); *see also In re Baycol Products Liability Litigation*, 180 F.Supp.2d 1378, 1380 (J.P.M.L. 2001) (citing the metropolitan nature of transferee court as an appropriate consideration). The presence of Chicago O’Hare International Airport and other major airports in the Chicago area will ease necessary travel by providing numerous direct flights from destinations across the United States to a central area of the country. Thus, the Northern District of Illinois is the most appropriate district for significantly reducing the costs of this litigation.

Finally, the Northern District of Illinois is well-versed in handling multidistrict litigation. Indeed, the Northern District’s bench and staff have extensive experience overseeing complex MDL proceedings, including the following products liability cases: *In re: Watson*, 883 F.Supp.2d 1350; *In re: Zimmer Nexgen Knee Implant Products Liab. Litig.*, 802 F.Supp.2d 1374 (J.P.M.L. 2011); *In re Navistar 6.0 L Diesel Engine Products Liab. Litig.*, 777 F.Supp.2d 1347 (J.P.M.L. 2011); *In re Aqua Dots Products Liab. Litig.*, 545 F.Supp.2d 1369 (J.P.M.L. 2008); *In re RC2 Corp. Toy Lead Paint Products Liab. Litig.*, 528 F.Supp.2d 1374 (J.P.M.L. 2007). This Panel previously noted that the Northern District of Illinois possesses the necessary resources to devote the time and effort required of a MDL. *In re Wireless Tel. 911 Calls Litig.*, 259 F. Supp. 2d 1372, 1374 (J.P.M.L. 2003). Moreover, there are a number of eminently qualified judges serving in the Northern District of Illinois with sufficient experience to properly navigate any pretrial issues that may arise.

Accordingly, American Family respectfully requests that the Panel enter an order transferring all pending Electrolux Cases to the Northern District of Illinois.

IV. CONCLUSION

For all the reasons set forth above, American Family respectfully requests that the Panel transfer the actions listed in the attached Schedule of Actions to the United States District Court for the Northern District of Illinois for coordinated or consolidated pretrial proceedings.

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Respectfully submitted,

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