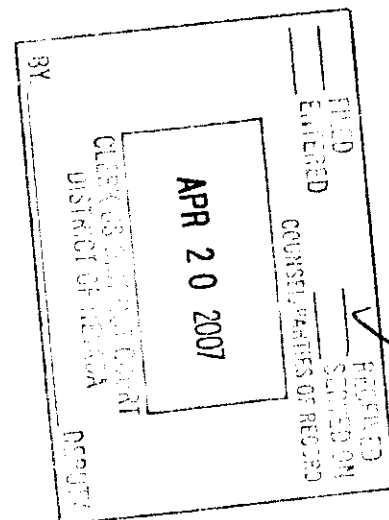


3:07-cv-159



**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

)
)
 IN RE: PET FOOD PRODUCTS LIABILITY)
 LITIGATION)
)
)
)

MDL Docket No. 1850

**MEMORANDUM OF LAW BY PLAINTIFFS
 JARED WORKMAN, MARK AND MONA COHEN, AND PEGGY SCHNEIDER IN
 RESPONSE TO 3 MOTIONS FOR TRANSFER AND COORDINATION,
 AND FOR THE TRANSFER AND CENTRALIZATION
 OF ALL PET FOOD PRODUCTS LIABILITY LITIGATION
 IN THE DISTRICT OF NEW JERSEY**

Plaintiffs Jared Workman, Mark and Monah Cohen, and Peggy Schneider (the “Workman Group”), who are plaintiffs in two class actions currently pending in the District of New Jersey,¹ submit this memorandum of law in response to the:

Motion of Plaintiff Shirley Sexton For Transfer and Coordination or Consolidation Under 28 U.S.C. § 1407 in the **Central District of California**, filed on March 26, 2007;

¹ Workman, et al. v. Menu Foods Limited, et al., No. 07-cv-1338 (D. N.J.); Schneider v. Menu Foods Limited, et al., No. 07-cv-1533(D. N.J.);

Motion of Florida Plaintiff Christina Troiano To Transfer and Coordinate or Consolidate Actions Under 28 U.S.C. § 1407 in the **Southern District of Florida**, filed on March 28, 2007; and

Motion of Plaintiffs Tom Whaley et al. For Transfer and Consolidation of Related Actions To The **Western District of Washington** Pursuant to 28 U.S.C. § 1407, filed on March 29, 2007.

For the reasons set forth below, **the Workman Group submits that these actions should be consolidated and transferred to the District Court for the District of New Jersey.**

INTRODUCTION

The primary goal of a transfer under 28 U.S.C. § 1407 is to promote the “convenience of parties and witnesses” and “the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). With those principles in mind, the Workman Group believes that the 24 or more cases filed regarding tainted pet food manufactured, distributed and/or sold by defendants should be consolidated and transferred to one forum, and that forum should be the United States District Court for the District of New Jersey. In making its decision, this panel should consider these indisputable facts:

- While class members likely reside in all 50 states, **New Jersey is the forum to which the Canadian Defendant Menu Foods has the strongest nexus.** Menu Foods Ltd. (a Canadian company) maintains two U.S. manufacturing facilities: one in Pennsauken, New Jersey incorporated under New Jersey law under the name Menu Foods Inc. and physically located in the District of New Jersey; and one in Emporia, Kansas incorporated under Delaware law under the name Menu Foods Midwest Corporation. Tainted pet food was manufactured in both plants. With a facility in New Jersey and a legal entity incorporated there, the District of New Jersey has the strongest nexus to defendants and the strongest ties to this litigation;
- **The District of New Jersey is the closest district court to the location of critical documents and witnesses.** Defendant Menu Foods’ New Jersey plant is directly implicated in the manufacture of tainted pet food. Thus, much of the discovery in the case, including defendants’ document production and depositions

of defendants' employees, will emanate from or take place in or around Pennsauken, New Jersey, where defendant Menu Foods Inc. is located. Since critical documents and witnesses are located in New Jersey, the District of New Jersey is the most convenient forum;

- Of the 39 lawsuits filed across the Country to date, **more complaints (16) were filed in the District of New Jersey than in any other district.**
- **More named plaintiffs agree that the District of New Jersey is the appropriate forum for this litigation over any other forum.** Because there are 26 named plaintiffs in 16 cases pending in the District of New Jersey, there are more plaintiffs seeking to recover against defendants for contaminated pet food in the District of New Jersey than in any other district court;
- **The District of New Jersey has extensive experience handling complex class action cases.** The District of New Jersey has the expertise, experience, and resources to handle this complex litigation;
- **The District of New Jersey, with its courthouse in Camden where the seven New Jersey actions are currently pending, is easily accessible to all parties due to the ease and variety of transportation in and out of neighboring Philadelphia.** Philadelphia International Airport is conveniently located 11.6 miles from the District Court and 19.2 miles from Menu Foods' Pennsauken, New Jersey plant;
- **The District of New Jersey is one of only two fora in which governmental investigations are pending.** The FDA has sent inspectors to investigate the Menu Foods' plants in New Jersey and Kansas; and
- **There are no real justifications to have the cases transferred to any other district.** No other districts - the Western District of Washington, the Central District of California, or the Southern District of Florida - have any real nexus to defendants, defendants' unlawful actions, the evidence, or the pertinent actors and witnesses. Again, the defendants are located in New Jersey, Canada and Kansas. While the movants propose some other forum merely because plaintiffs have filed suits there, the fact is that class members likely reside in all 50 states. Thus, there are no compelling reasons to consolidate and transfer these case to any of the fora proposed by defendants.

Based upon these factors, the cases should be transferred to the District of New Jersey.

ARGUMENT

First, the District of New Jersey is the forum to which the Defendant Menu Foods Ltd. (a

Canadian Company) has the strongest nexus. See In re Swine Flu Immunization Products Liability Litig., 446 F.Supp. 244, 247 (J.P.M.L. 1978) (“Administrative control over the swine flue program was exercised by officials of the Department of Health, Education and Welfare, which is headquartered in the District of Columbia. The District of the District of Columbia therefore has a greater nexus to the principal issues involved in this litigation than any other federal district.”) citing In re Sundstrand Data Control, Inc. Patent Litig., 443 F.Supp. 1019, 1021 (J.P.M.L. 1978) Menu Foods Ltd. maintains two manufacturing plants in the Untied States, both of which are implicated in the contaminated pet food at issue. One plant is physically located in Pennsauken, New Jersey and is incorporated under New Jersey law under the name Menu Foods Inc. The second plant is located in Emporia, Kansas and is incorporated under Delaware law under the name Menu Foods Midwest Corporation. While members of the class reside in all fifty states, only the district courts of New Jersey and Kansas bear any nexus to the underlying conduct in this litigation other than the fact that plaintiffs reside there. To date, no plaintiff has filed a case in, and no plaintiff has requested transfer of all cases to, Kansas. The strong nexus of the District of New Jersey to defendants and this litigation, combined with the other factors discussed below, make it the appropriate forum for this multidistrict litigation.

Second, the District of New Jersey is the forum closest to the location where discovery of documents and witnesses will occur. Defendant Menu Foods’ New Jersey plant is directly implicated in the manufacture of tainted pet food. Thus, New Jersey is the forum in which critical documents and witnesses actually exist. Much discovery – including document production and the depositions of Menu Foods’ employees – will occur in the District of New Jersey. Because the District of New Jersey is the forum closest to the relevant documents and

witnesses, it is the most convenient forum and, thus, should be selected as the transferee forum. See In re Southwestern Life Ins. Co. Sales Practices Litig., 268 F. Supp. 2d 1377, 1378 (J.P.M.L. 2003) (court closest to witnesses and documents was chosen); In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India, 601 F. Supp. 1035, 1036 (J.P.M.L. 1985) (Panel chose forum closest to defendant's corporate headquarters where relevant witnesses and documents might be located); In re Richardson-Merrell, Inc., 533 F. Supp. 489, 490-91 (J.P.M.L. 1982) (same); In re Sundstrand Data Control, Inc. Patent Litig., 443 F.Supp. 1019, 1021 (J.P.M.L. 1978) (most of the relevant documents and witnesses were located in the vicinity of the transferee forum); see also 15 Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 3864 n.6, 19 (3d ed. 2006) (collecting cases).

Third, more complaints were filed in the District of New Jersey against defendants than in any other district. Of the 39 cases filed to date, 16 were filed in the District of New Jersey. This compares to 2 filed in the Western District of Arkansas; 1 filed in the Northern District of California; 3 filed in the Central District of California; 1 filed in the District of Connecticut; 1 filed in the Southern District of Florida; 1 filed in the Northern District of Florida; 1 filed in the Northern District of Illinois; 1 filed in the District of Maine; ; 1 filed in the Western District of Wisconsin; 1 filed in the District of Rhode Island; 2 filed in the Eastern District of Tennessee; 1 filed in the District of Ohio; 1 filed in the District of Idaho; 1 filed in the District of Nevada; and 5 filed in the Western District of Washington.² See 3 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 9:16 (4th ed. 2006) [hereinafter "Newberg on Class Actions"] ("Other factors that may be considered in selecting the appropriate transferee district are: . . . (9)

² A list of currently filed federal actions against Menu Foods is attached hereto as Addendum A.

a forum where most of the cases were originally filed.”) (collecting cases).

Fourth, more named plaintiffs agree that the District of New Jersey is the appropriate forum for this litigation over any other forum. There are 26 named plaintiffs in the 16 cases filed in the District of New Jersey. This compares to 4 named plaintiffs in the 2 cases filed in the Western District of Arkansas; 1 named plaintiff in the case filed in the Northern District of California; 4 named plaintiffs in the 3 cases filed in the Central District of California; 1 named plaintiff in the case filed in the District of Connecticut; 1 named plaintiff in the case filed in the Southern District of Florida; 2 named plaintiffs in the case filed in the Northern District of Florida; 1 named plaintiff in the case filed in the Northern District of Illinois; 1 named plaintiff in the case filed in the District of Maine; 2 named plaintiffs in the case filed in the Western District of Wisconsin; 1 filed in the Western District of Wisconsin 1 named plaintiff in the case filed in the District of Rhode Island; 5 named plaintiffs in the 2 cases filed in the Eastern District of Tennessee; 1 named plaintiff in the case filed in the District of Ohio; 3 named plaintiffs in the case filed in the District of Idaho; 1 named plaintiff in the case filed in the District of Nevada; and 12 named plaintiffs in the 5 cases filed in the Western District of Washington. Thus, more named plaintiffs believe that the District of New Jersey is the appropriate forum for this litigation over any other forum. See Newberg on Class Actions § 9:16 (“Other factors that may be considered in selecting the appropriate transferee district are: . . . (11) a forum upon which most parties agree.”) (collecting cases).

Fifth, the District of New Jersey has extensive experience handling complex class action cases. The Panel should consider that the District of New Jersey has the expertise, experience, and resources to handle this complex case. See In re Gator Comp. Software Trademark &

Copyright Litigation, 259 F. Supp. 2d 1378, 1380 (J.P.M.L. 2003) (Panel chose court which was an accessible, metropolitan court, not overtaxed in its docket, and which had “necessary resources and expertise” to handle the matter); In re Wireless Telephone 911 Calls Litigation, 259 F. Supp. 2d 1372, 1374 (J.P.M.L. 2003) (Panel chose court which possessed the necessary resources to handle the matter).

Sixth, the District of New Jersey is the forum in which a governmental investigation is pending. Along with Kansas, New Jersey is the only forum in which the FDA is leading an investigation into the Menu Foods contaminated pet food crisis.³ See Newberg on Class Actions § 9:16 (“Other factors that may be considered in selecting the appropriate transferee district are: . . . (2) the district within which a governmental enforcement action is pending.”) (collecting cases).

Seventh, the District of New Jersey, with its office in Camden where 15 of the 16 District of New Jersey complaints are currently pending before Judge Noel L. Hillman, is easily accessible to all parties due to the ease and variety of transportation in and out of Philadelphia, a major urban center just across the Delaware River from Camden. Philadelphia’s International Airport is conveniently located 11.6 miles from the New Jersey District Court in Camden and 19.2 miles from Menu Foods’ New Jersey facility. This litigation will benefit from having a locale convenient to all parties involved in a major accessible metropolitan center. See In re WorldCom, Inc. Sec. & ERISA Litig., 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002) (Panel chose New York as forum because litigation would benefit from “centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations,

³ <http://www.msnbc.msn.com/id/17650075/>, accessed April 2, 2007.

and offers a well developed support system for legal services”).

Eight, there are no real justifications to have the cases transferred to any other district.

Neither Florida, California, nor Washington have any real nexus to Menu Foods’ pet food contamination, the evidence, witnesses or the parties (other than class members, who reside in all 50 states).

In sum, based on all of these relevant factors, the District Court for the District of new Jersey is the most appropriate forum for this litigation.

CONCLUSION

For the reasons stated above, the Panel should take jurisdiction over the currently-pending actions and enter an order transferring them, and any “tag along” actions, to the U.S. District Court for the District of New Jersey.

Dated: April 9, 2007

Respectfully Submitted,

BERGER & MONTAGUE, P.C.



Sherrie R. Savett, Esq.

Michael T. Fantini, Esq.

Russell D. Paul, Esq.

1622 Locust Street

Philadelphia, PA 19103

TEL: (215) 875-3000

FAX: (215) 875-4636

Counsel for Plaintiffs Jared Workman, Mark and Mona Cohen, and Peggy Schneider