

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: ZURN PEX PLUMBING PRODUCTS  
LIABILITY LITIGATION**

John Pupuhi Baker, Jr., et al. v. Castle & Cooke Homes )  
Hawaii, Inc., et al., D. Hawaii, C.A. No. 1:11-00616 ) MDL No. 1958

**ORDER VACATING CONDITIONAL TRANSFER ORDER**

**Before the Panel:** Pursuant to Panel Rule 7.1, plaintiffs in a District of Hawaii action (*Baker*) and defendant Castle & Cooke Homes Hawaii, Inc. (C&C) move to vacate our order that conditionally transferred *Baker* to MDL No. 1958. Zurn defendants<sup>1</sup> oppose the motions.

After considering all argument of counsel, we will grant the motions to vacate because transferring *Baker* to the District of Minnesota is not appropriate in these circumstances. The Panel ordered centralization in this docket in August 2008, and the MDL is proceeding apace. *See In re: Zurn Pex Plumbing Prods. Liab. Litig.*, 572 F. Supp. 2d 1380, 1381 (J.P.M.L. 2008) (finding that “[a]ll actions share factual questions regarding the development, design, manufacture, and marketing of Zurn pex<sup>2</sup> brass fittings, which plaintiffs contend are subject to premature failure.”). There is no dispute that some of the allegations in *Baker* overlap with those in MDL No. 1958; however, *Baker* involves other claims against the builder/developer C&C, which in turn has brought third party claims against architects, designers and plumbers. Most other MDL actions are brought solely against the Zurn defendants. Further, no MDL action brings claims under Hawaii law, and the scope of the *Baker* action is fairly limited, focusing on a single Hawaii housing development involving around 3,500 homes. Because Zurn is already participating in related Hawaii state court litigation, it likely will not be significantly inconvenienced by continuing to litigate in Hawaii. Indeed, Zurn had no apparent difficulty litigating in Hawaii during the seven months after removal before it notified the Panel of the pendency of *Baker*. During that time, Judge Susan Oki Mollway has invested significant time in understanding the claims in *Baker*, as evidenced by her extensive decision granting in part and denying in part Zurn’s motion to dismiss.

In reaching this conclusion, we observe that Judge Mollway in *Baker* may find useful guidance in Judge Montgomery’s pretrial rulings in MDL No. 1958. Further, though we are denying transfer, we nevertheless encourage the parties and involved courts to pursue various alternative approaches, should the need arise, to minimize the potential for duplicative discovery and inconsistent pretrial rulings. *See*,

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<sup>1</sup> Zurn Industries, LLC, and Zurn Pex, Inc.

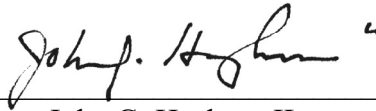
<sup>2</sup> “Pex” refers to cross-linked polyethylene, which is used to make flexible plastic pipes that are in common use in plumbing applications across the country.

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*e.g., In re Eli Lilly and Co. (Cephalexin Monohydrate) Pat. Litig.*, 446 F.Supp. 242, 244 (J.P.M.L. 1978); *see also Manual for Complex Litig., Fourth*, § 20.14 (2004).

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-7" is vacated in its entirety.

PANEL ON MULTIDISTRICT LITIGATION



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