

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

---

**IN RE: TRANSFER TAX  
LITIGATION**

---

**MDL No.:** \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF GENESEE COUNTY'S MOTION  
FOR TRANSFER OF ACTIONS TO THE EASTERN DISTRICT OF MICHIGAN  
PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED  
PRETRIAL PROCEEDINGS**

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND.....	2
A. Transfer Tax and Defendants.....	2
B. The Transfer Tax Cases.....	2
III. ANALYSIS.....	3
A. The Transfer Tax Cases Should Be Transferred to a Single District for Pretrial Coordination.....	3
1. The Transfer Tax Cases Involve Common Questions of Fact.....	4
2. Transfer Would Be Convenient for the Parties and Witnesses.....	6
3. Transfer Would Promote the Just and Efficient Conduct of the Litigation.....	7
B. The Transfer Tax Cases Should Be Transferred to the Eastern District of Michigan.....	10
IV. CONCLUSION.....	13

## TABLE OF AUTHORITIES

### Cases

<i>In re AT&amp;T Mobility Wireless Data Servs. Sales Tax Litig.</i> , 710 F. Supp. 2d 1378, 1380 (J.P.M.L. 2010) .....	5, 8
<i>In re Baldwin-United Corp. Litig.</i> , 581 F. Supp. 739, 741 (J.P.M.L. 1984).....	7
<i>In re Bank of America Home Affordable Modification Program (HAMP) Contract Litig.</i> , 746 F. Supp. 2d 1359, 1360 (J.P.M.L. 2010) .....	11
<i>In re Baycol Prods. Liab. Litig.</i> , 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) .....	9
<i>In re Cardizem CD Antitrust Litigation</i> , MDL No. 1278, 1999 U.S. Dist. LEXIS 9285, *3 (J.P.M.L. 1999) .....	11
<i>In re Celotex Corp. “Technifoam” Prods. Liab. Litig.</i> , 424 F. Supp. 1077, 1078-79 (J.P.M.L. 1977) .....	5
<i>In re Chinese-Manufactured Drywall Prods. Liab. Litig.</i> , 626 F. Supp. 2d 1346, 1347 (J.P.M.L. 2009) .....	13
<i>In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Prods. Liab. Litig.</i> , 598 F. Supp. 2d 1372, 1373 (J.P.M.L. 2009) .....	7
<i>In re Cygnus Telcoms. Tech., LLC Patent Litig.</i> , 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001) .....	9
<i>In re Darvocet, Darvon &amp; Propoxyphene Prods. Liab. Litig.</i> , MDL No. 2226, 2012 U.S. Dist. LEXIS 81394, at *2 (J.P.M.L. June 12, 2012).....	4
<i>In re European Rail Pass Antitrust Litig.</i> , MDL No. 1386, 2001 U.S. Dist. LEXIS 1417, at *3 (J.P.M.L. Feb. 7, 2001) .....	8
<i>In re Maxim Integrated Prods.</i> , MDL No. 2354, 2012 U.S. Dist. LEXIS 79496, at *4 (J.P.M.L. June 8, 2012).....	4
<i>In re Method of Processing Ethanol Byproducts and Related Subsystems (‘858) Patent Litig.</i> , 730 F. Supp. 2d 1379, 1380 (J.P.M.L. 2010) .....	6
<i>In re Methyl Methacrylate (MMA) Antitrust Litig.</i> , 435 F. Supp. 2d 1345, 1347 (J.P.M.L. June 20, 2006).....	12
<i>In re Metoprolol Succinate Patent Litig.</i> , 329 F. Supp. 2d 1368, 1370 (J.P.M.L. 2004) .....	8

*In re MF Global Holdings Ltd. Inv. Litig.*, MDL No. 2338, 2012 U.S. Dist. LEXIS 58792, at \*4 (J.P.M.L. Apr. 23, 2012) .....5

*In re MI Windows and Doors, Inc. Prods. Liab. Litig.*, MDL No. 2333, 2012 U.S. Dist. LEXIS 58791, at \* (J.P.M.L. Apr. 23, 2012) .....11

*In re Natural Res. Fund, Inc. Sec. Litig.*, 372 F. Supp. 1403, 1404 (J.P.M.L. 1974) .....9

*In re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359, 1360-1361 (J.P.M.L. 2008).....5

*In re Pharmacy Benefit Managers*, 452 F. Supp. 2d 1352, 1353 (J.P.M.L. 2006) .....9

*In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1380 (J.P.M.L. 2001) .....11

*In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) .....10

*In re Polychloroprene Rubber Antitrust Litig.*, 360 F. Supp. 2d 1348, 1350-1351 (J.P.M.L. 2005) .....7

*In re Refrigerant Compressors Antitrust Litig.*, 626 F. Supp. 2d 1320 (J.P.M.L. 2009) .....11

*In re Tribune Co. Fraudulent Conveyance Litig.*, MDL No. 2296, 2011 U.S. Dist. LEXIS 146375, \*1-5 (J.P.M.L. Dec. 20, 2011) .....10

*In re: Merscorp Inc., et al., Real Estate Settlement Procedures Act (RESPA) Litig.*, 560 F. Supp. 2d 1371, 1372 (J.P.M.L. 2008).....5

**Statutes**

12 U.S.C. § 1723a(c)(2) .....2

12 U.S.C. § 4617(j)(2) .....2

28 U.S.C § 1407(a) .....1

28 U.S.C. § 1407.....1, 4, 7, 13

**Other Authorities**

Manual for Complex Litigation, Fourth, § 20.131 (2004) .....4

Ten Steps to Better Case Management: A Guide for Multidistrict Litigation Transferee Judges (2009) .....9

**Rules**

Fed. R. Civ. P. 23(g)(3).....9

United States Judicial Panel on Multidistrict Litigation, Rules 7.1 and 7.2 .....8

## I. INTRODUCTION

Coordination and Transfer of the pending Transfer Tax Cases under 28 U.S.C. § 1407 is proper because the cases all arise from the same factual context and involve the same facts and sole legal issue – whether Fannie Mae and Freddie Mac improperly claim that they are “exempt” from state laws requiring payment of such a tax on the transfer of real estate. Pretrial proceedings, including class certification, motion practice, discovery and damage methodology issues in all of the Transfer Tax Cases will involve the same evidence and arguments, which will in turn be directed toward resolving the parties’ positions relative to the central issue in all the cases – the transfer tax exemption issue.

For example, all of the ten cases filed to date involve exactly the same facts and claims, namely that: (1) counties are obligated to collect transfer taxes when recording real property deeds; (2) Fannie Mae and Freddie Mac have presented deeds to counties on which they have claimed to be exempt from paying the transfer tax; (3) Fannie Mae and Freddie Mac base their alleged exempt status on the same two arguments—that they are exempt as governmental entities under state law, or are free from paying “all taxes” under federal statutes; (4) plaintiffs contend that Fannie Mae and Freddie Mac are not in fact governmental entities nor exempt from paying the transfer taxes under the federal laws; and (5) Fannie Mae and Freddie Mac face liability for payment of significant amounts of money in transfer taxes during the applicable time period. Having one transferee court preside over one consolidated MDL case will promote orderly pretrial proceedings, and result in consistent rulings on discovery, class certification motions, and ultimately the critical “exemption” issue, all of which are consistent with this Panel ordering consolidation under 28 U.S.C § 1407(a).

## II. FACTUAL BACKGROUND

The Transfer Tax Cases involve the same common facts. Pursuant to statutes in the thirty-five (35) states which require payment of property transfer taxes (including the states in which plaintiffs are located) the recorder or registrar of titles of the county in which the property is located collects a transfer tax for the privilege of transferring real estate (the “Transfer Tax”).

The recent years have involved record high foreclosure rates, and thus record high numbers of deed recordations. Defendants Fannie Mae and Freddie Mac have been the grantors in many real estate transactions in the plaintiff states throughout the country over the past several years as a result of the spike in mortgage defaults and foreclosures, and thus required to pay a statutorily-imposed Transfer Tax. These cases all revolve around Fannie Mae and Freddie Mac failing to pay transfer taxes on deeds recorded with the recorder or register of deeds.

In the states where Fannie Mae and Freddie Mac did not pay the Transfer Tax, they indicated, on the face of the deeds that they present for recording, that they are exempt from paying the Transfer Tax. According to Fannie Mae and Freddie Mac, there are two reasons for the exemption. First, they argue that they are government entities and, under some state statutes (such as in Michigan and Illinois) government entities are indeed exempt from paying transfer taxes. Other times they claim they are exempt from paying “all taxes” pursuant to federal statute. *See* 12 U.S.C. § 1723a(c)(2) and 12 U.S.C. § 4617(j)(2).<sup>4</sup>

---

<sup>4</sup> Specifically, in the Genesee County and the Oakland County cases Fannie Mae and Freddie Mac made the argument that they are exempt from payment of the Michigan statutorily imposed transfer tax because they are governmental entities and thus immune by state statute, and because they are free from paying “all taxes” pursuant to federal statutes 12 U.S.C. § 1723a(c)(2) and 12 U.S.C. § 4617(j)(2).

Plaintiffs contend that neither of the exemptions claimed by Fannie Mae and Freddie Mac applies to the transfer taxes. Specifically, the federal statutory exemption as to taxes applies only to direct taxes, not excise taxes—which is what a transfer tax is. Furthermore, Defendants Fannie Mae and Freddie Mac are federally-chartered private corporations, and thus not government entities. Therefore, all of the state statutes providing an exemption to governmental entities from paying the Transfer Tax do not cover Defendants.

Despite their disagreement over the applicability of the exemptions claimed by Defendants, both sides agree on one thing – the case all concern Fannie Mae and Freddie Mac’s practices of claiming an exemption to statutorily-imposed state Transfer Taxes and failing to pay transfer taxes. Defendants Declaratory Action Complaint in fact confirms as much in the very first paragraph, which states:

1. This action arises from actions of certain Illinois County officials to impose liability on the Enterprises for Illinois state and county transfer taxes -- taxes owed at the time the Enterprises record real estate deeds. Because Congress has expressly exempted the Enterprises and the Conservator from all state and local taxation with a single exception that is inapplicable here, the Enterprises are immune from liability for those taxes. To resolve the actual controversy as to the application of Plaintiffs’ federal statutory immunity, Plaintiffs are entitled to a judgment declaring that they cannot be liable for the taxes Defendants seek to collect.

### III. ANALYSIS

#### A. **The Transfer Tax Cases Should Be Transferred to a Single District for Pretrial Coordination.**

The Panel may transfer cases to a single judicial district for pretrial coordination or consolidation if: (1) they involve “common questions of fact”; (2) transfer would be convenient for the parties and witnesses; and (3) transfer would “promote the just and efficient conduct” of the cases. 28 U.S.C. § 1407(a). “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 parties, the attorneys, the witnesses, and the courts.” *Manual for Complex Litigation, Fourth*, § 20.131 (2004).

**1. The Transfer Tax Cases Involve Common Questions of Fact.**

Section 1407 authorizes the transfer and coordination of cases that involve “common questions of fact.” 28 U.S.C. § 1407(a). The relevant question is whether the actions “arise from a common factual core.” *Id.* The Transfer Tax Cases easily meet that test. For example, all of these cases allege the same principal facts, namely that: (1) the counties are obligated to collect transfer taxes when recording real property deeds; (2) Fannie Mae and Freddie Mac presented deeds to counties on which they claim to be exempt from paying the transfer tax; (3) Fannie Mae and Freddie Mac base their alleged exempt status on the same two arguments— that they qualify as governmental entities under the law or are free from paying “all taxes” under federal statutes; (4) plaintiffs contend that Fannie Mae and Freddie Mac are not in fact governmental entities nor exempt from paying the transfer taxes under the federal laws; and (5) Fannie Mae and Freddie Mac are liable to pay transfer taxes during the applicable time period—or not liable in the case of the declaratory action filed by The Federal National Mortgage Association.

Clearly, the Transfer Tax actions are nearly identical, exceeding the requirements of Section 1407(a), and making transfer and consolidation of the actions highly appropriate. *See In re Maxim Integrated Prods.*, MDL No. 2354, 2012 U.S. Dist. LEXIS 79496, at \*4 (J.P.M.L. June 8, 2012) (“[t]ransfer under Section 1407(a) does not require a complete identity or even majority of common factual or legal issues as a prerequisite to transfer.”); *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL. No. 2226, 2012 U.S. Dist. LEXIS 81394, at \*2

(J.P.M.L. June 12, 2012) (“Furthermore, while these actions may involve some unique issues of fact, the majority of claims are virtually identical to claims already pending in the MDL. Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer.”); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 710 F. Supp. 2d 1378, 1380 (J.P.M.L. 2010) (transfer and consolidation proper for 29 actions involving state sales taxes filed in 28 districts); *In re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359, 1360-1361 (J.P.M.L. 2008) (actions which plead claims under different state statutory and common law appropriate for transfer because “presence of additional or differing legal theories is not significant when the actions still arise from a common factual core”).

Consolidation and transfer is appropriate even though one group of plaintiffs have asserted different legal claims in addition to the statutory obligation to pay the Transfer Tax. 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.*, MDL No. 2338, 2012 U.S. Dist. LEXIS 58792, at \*4 (J.P.M.L. Apr. 23, 2012).; *see also 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 plaintiffs opposed transfer citing “unique state law claims,” Panel found that transfer was 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.”).

Nor does it matter if some of the cases name defendants in addition to Fannie Mae and Freddie Mac. *See In re Celotex Corp. “Technifoam” Prods. Liab. Litig.*, 424 F. Supp. 1077, 1078-79 (J.P.M.L. 1977) (“The fact that [an action] may also involve parties and issues not

present in the other actions . . . is no obstacle to transfer.”). The relevant question for Section 1407 purposes is whether the ten cases share common questions of fact, which here, they all clearly do.

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

Transferring the Transfer Tax Cases to a common Court—for example, the Eastern District of Michigan—would be convenient for the parties and any witnesses, if needed. Fannie Mae and Freddie Mac are the primary defendants named in each of the current ten Transfer Tax cases listed on Schedule A. From Fannie Mae and Freddie Mac’s perspective, transferring the cases to a single court would be far more convenient than simultaneously litigating the same issues in multiple states such as Michigan, Illinois, West Virginia, Georgia, Florida, and Rhode Island. Because all of the underlying cases are so similar, pretrial coordination of these actions in any single district is more appropriate than allowing the cases to proceed individually. It simply makes sense for one judge to “structure pretrial proceedings to accommodate all parties’ legitimate discovery needs while ensuring that the common party and witnesses are not subjected to discovery demands that duplicate activity that will or has occurred in other actions.” *In re Method of Processing Ethanol Byproducts and Related Subsystems* (‘858) *Patent Litig.*, 730 F. Supp. 2d 1379, 1380 (J.P.M.L. 2010). Without centralization, Fannie Mae and Freddie Mac would be subjected to multiple different district judges’ decisions on the timing and scope of discovery, class certification, and other important pretrial issues. Allowing multiple different cases to proceed in different jurisdictions would create needless inconvenience, disruption and burden.

Plaintiffs, too, will benefit from pretrial centralization. Instead of proceeding individually, they can “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). It would be a highly wasteful exercise for different groups of plaintiffs’ lawyers to engage in redundant pretrial activities when the work can be divided in a coordinated proceeding in a more efficient manner.

Consolidation will also enable a single judge to establish a pretrial program that will minimize expenses to the parties. These savings are precisely the types of savings that this Panel has used traditionally to justify the consolidation of actions in different jurisdictions. *See In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Prods. Liab. Litig.*, 598 F. Supp. 2d 1372, 1373 (J.P.M.L. 2009) (finding that “[c]entralization w[ould] enable one judge to streamline pretrial proceedings and make consistent rulings on discovery disputes, dispositive motions, and issues relating to experts” where the proposed classes did not overlap, but where the actions were “nearly identical in terms of the facts alleged”); *In re Polychloroprene Rubber Antitrust Litig.*, 360 F. Supp. 2d 1348, 1350-1351 (J.P.M.L. 2005) (“Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to class certification matters), and conserve the resources of the parties, their counsel and the judiciary.”).

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

Transfer to a single district also would “promote the just and efficient conduct” of the Transfer Tax Cases. 28 U.S.C. § 1407. In light of the nearly identical factual allegations

transfer under Section 1407 will save judicial time and resources. *See AT&T Mobility*, 710 F. Supp. 2d at 1380 (“centralization 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 European Rail Pass Antitrust Litig.*, MDL No. 1386, 2001 U.S. Dist. LEXIS 1417, at \*3 (J.P.M.L. Feb. 7, 2001) (ordering cases transferred to a single district to “eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.”).

First, as explained above, the Michigan cases pending in the Eastern District of Michigan before Judge Roberts are advanced, and she is very familiar with the issues involved in the Transfer Tax Cases, as well as the parties’ positions as to pre-trial practice. In contrast, all of the other cases are in their earliest stages. In fact, they have all been filed within the past few months or weeks. Fannie Mae and Freddie Mac have not responded to the underlying complaints, let alone engaged in substantive negotiations with the plaintiffs concerning case management. When an opportunity presents itself, as it has here, it makes sense to coordinate these actions from the start, and ensure that all parties can benefit from the MDL tag-along procedures in the likely event that similar cases are filed subsequently. *See United States Judicial Panel on Multidistrict Litigation*, Rules 7.1 and 7.2; *In re Metoprolol Succinate Patent Litig.*, 329 F. Supp. 2d 1368, 1370 (J.P.M.L. 2004) (“Section 1407 will have the salutary effect of assigning the present actions and any future tag-along actions to a single judge who can formulate a pretrial program that ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties and the courts.”).

Second, transfer would ensure consistent pretrial rulings on dispositive motions, and class certification. *See, e.g., In re Baycol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) (centralization promotes the just and efficient conduct of litigation where it “prevent[s] inconsistent pretrial rulings, including with respect to class certification”); *In re Cygnus Telcoms. Tech., LLC Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001) (“And while we applaud every cooperative effort undertaken by parties to any litigation, we observe that transfer under Section 1407 has the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to consider all parties’ legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands which duplicate activity that has already occurred or is occurring in other actions”). It would be inefficient for seven judges (or more) to issue potentially conflicting merits and class certification rulings in putative nationwide class actions against the same defendant over the same core conduct. *See, e.g., In re Pharmacy Benefit Managers*, 452 F. Supp. 2d 1352, 1353 (J.P.M.L. 2006) (where the defendants in the actions differed, but the allegations all focused on the same conduct, finding that centralization was “desirable” in order to “prevent inconsistent or repetitive pretrial rulings (especially on the issue of class certification)”); *In re Natural Res. Fund, Inc. Sec. Litig.*, 372 F. Supp. 1403, 1404 (J.P.M.L. 1974) (“[T]he potential for conflicting class determinations by the transferor courts” is a “highly persuasive if not compelling reason for transfer.”).

In a consolidated or coordinated proceeding under Section 1407 where class actions are involved – as here – the presiding district judge is likely to appoint interim class counsel under Fed. R. Civ. P. 23(g)(3). *See Ten Steps to Better Case Management: A Guide for Multidistrict*

Litigation Transferee Judges (2009) (“It is often necessary in complex MDLs to select lead, liaison, and/or administrative counsel. This is one of your first and most important decisions.”). Appointed interim class counsel can then make decisions on behalf of the putative class, including the composition of a master complaint and agreements with defense counsel concerning scheduling and discovery matters. That creates efficiencies for the parties and the judiciary and ensures an orderly process.

However, in the absence of pretrial centralization, plaintiffs would likely vie for conflicting interim class counsel appointments in multiple judicial districts and likely seek different pretrial schedules and make different discovery demands. *See, e.g., In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) (“It is in the field of class action determinations in related multidistrict civil actions that the potential for conflicting, disorderly, chaotic judicial action is the greatest.”). That procedural morass can be avoided by ordering the Transfer Tax Cases transferred to a single district under Section 1407 and it will confer benefits upon the plaintiffs, defendants and the judiciary. *See In re Tribune Co. Fraudulent Conveyance Litig.*, MDL No. 2296, 2011 U.S. Dist. LEXIS 146375, \*1-5 (J.P.M.L. Dec. 20, 2011) (transfer and consolidation will conserve resources of judiciary, the parties, and their counsel)

**B. The Transfer Tax Cases Should Be Transferred to the Eastern District of Michigan**

The Eastern District of Michigan is the most appropriate district for the Transfer Tax Cases to proceed for pretrial activities relative to all of the substantive reasons outlined above. It is likely that counsel for Fannie Mae and Freddie Mac in the Michigan cases and counsel for the Michigan plaintiffs and the Michigan class, will become active participants in any consolidated Transfer Tax litigation. Certainly their familiarity with the legal and factual issues will be most

efficiently utilized to prosecute the Transfer Tax litigation in the Eastern District of Michigan before Judge Roberts, before whom they have all been working well together since the summer of 2011. See *In re MI Windows and Doors, Inc. Prods. Liab. Litig.*, MDL No. 2333, 2012 U.S. Dist. LEXIS 58791, at \* (J.P.M.L. Apr. 23, 2012) (transferring actions to district of the “earliest filed and most advanced actions”); *In re Bank of America Home Affordable Modification Program (HAMP) Contract Litig.*, 746 F. Supp. 2d 1359, 1360 (J.P.M.L. 2010) (transferring case to district of one of the first-filed actions).

In addition, the Eastern District of Michigan is “a major metropolitan court” that possesses the “necessary resources to be able to devote the substantial time and effort to pretrial matters” that these proceedings will require. See: *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1380 (J.P.M.L. 2001) (citing major metropolitan nature of transferee court in effecting transfer). The docket for the Eastern District of Michigan is well-run by its twenty-one District Judges, eight Magistrate Judges and Chief Judge, Gerald E. Rosen.<sup>5</sup> Additionally, the Eastern District of Michigan is not overburdened with MDL proceedings: there are only six MDL actions pending, and two before the same judge.<sup>6</sup> These factors have favored transfer to the Eastern District of Michigan before. See *In re Refrigerant Compressors Antitrust Litig.*, 626 F. Supp. 2d 1320 (J.P.M.L. 2009) (determining that Eastern District of Michigan was appropriate transferee forum because many actions were currently pending there, and judge had “caseload that is relatively favorable to steer this litigation on a prudent course.”); *In re Cardizem CD Antitrust Litigation*, MDL No. 1278, 1999 U.S. Dist. LEXIS 9285, \*3 (J.P.M.L.

---

<sup>5</sup> United States District Court for the Eastern District of Michigan, Judges Index, <http://www.mied.uscourts.gov/Judges/index.cfm?sort=dis> (last accessed June 27, 2012).

<sup>6</sup> United States Judicial Panel on Multidistrict Litigation, Current and Pending MDL Cases, <http://www.jpml.uscourts.gov/pending-mdls-0> (last accessed June 27, 2012).

1999) (factor favoring transfer to Eastern District of Michigan was “relatively favorable caseload”. . . . “We are persuaded that the Eastern District of Michigan is the most appropriate transferee forum for this litigation. We note that. . . the Michigan court is centrally located and easily accessible for parties and witnesses in this nationwide litigation. . . .”).

Access to the Court will be efficient and straightforward for any necessary in-person appearances. Detroit is a major city with relatively easy access by air.<sup>7</sup> The airport is one of the nation’s most-recently expanded and modernized airports, with six major runways, two terminals, 145 in-service gates, an on-site Westin Hotel and conference center and was named the best large U.S. airport in customer satisfaction by J.D. Power & Associates in 2010. Where the actions subject to a transfer motion are geographically dispersed, the Panel traditionally has sought to identify a location that maximizes accessibility and convenience for the parties and their counsel. *See, e.g., In re Methyl Methacrylate (MMA) Antitrust Litig.*, 435 F. Supp. 2d 1345, 1347 (J.P.M.L. June 20, 2006) (weighing geographic convenience in transfer decision).

Finally, it also bears noting that the escalating housing foreclosures, and resulting transfer tax liabilities, over the past several years have affected some communities in the country more than others. The counties in the Eastern District of Michigan are among the worst hit by the foreclosure crises in America. In fact, the past several years have produced all-time record high foreclosure rates in cities located within the Eastern District boundaries, including Detroit, Pontiac, Flint and all the downriver communities. Thus the District has a genuine interest in

---

<sup>7</sup> The Detroit Metropolitan Wayne County Airport (DTW) <http://www.metroairport.com/> is only twenty miles from the United States District Courthouse in Detroit Michigan, which is the second largest Delta Airlines hub city. In addition to the hundreds of Delta flights in and out of Detroit daily, most other airlines provide several daily flights to Detroit, including Air Canada, Air France, Air Tran, American, American Eagle, Continental, Frontier, Lufthansa, KLM, Southwest, Spirit, United, and US Airways.

overseeing the parties' dispute. *See, e.g., In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 626 F. Supp. 2d 1346, 1347 (J.P.M.L. 2009).

#### IV. CONCLUSION

For the foregoing reasons, Genesee County respectfully requests that the Panel transfer the Transfer Tax Cases, listed in the attached Schedule of Actions, to the United States District Court for the Eastern District of Michigan, for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Transfer to the Eastern District of Michigan before Judge Victoria A. Roberts is appropriate because the first filed cases of the ten cases pending already is pending there, because that district has the resources and judicial expertise to conduct this case promptly and efficiently, and because that district, being centrally located, is most convenient to all the parties to these nationwide class actions.

Dated: June 29, 2012

Respectfully submitted,

s/ Jason J. Thompson (P47184)

Sommers Schwartz, P.C.  
2000 Town Center, Suite 900  
Southfield, MI 48075-1100  
248-355-0300  
[jthompson@sommerspc.com](mailto:jthompson@sommerspc.com)

William H. Horton (P31567)  
Giarmarco, Mullins & Horton, P.C.  
101 West Big Beaver Road, 10<sup>th</sup> Fl.  
Troy, MI 48084-5280  
248-457-7000  
[bhorton@gmhlaw.com](mailto:bhorton@gmhlaw.com)

Kenneth J. Robinson (P19525)  
39577 Woodward Ave., Ste. 300  
Bloomfield Hills, MI 48304  
313-530-1122  
[ken@kjrobinson.com](mailto:ken@kjrobinson.com)

*Counsel for Genesee County and Deborah Cherry*