

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION

MDL No. 1203

TRANSFER ORDER

Before the Panel: Defendant Wyeth LLC (Wyeth) moves under 28 U.S.C. § 1407(c) to transfer the action listed on Schedule A (*Heineman II*) to the Eastern District of Pennsylvania for inclusion in MDL No. 1203. Plaintiffs Jennifer Heineman, Eric Allen Heineman, and Sill Law Group, PLLC, oppose the motion.

Plaintiffs' arguments against transfer are based on the somewhat unusual history of this litigation. In 2012, plaintiffs filed a personal injury action against a number of Wyeth-related entities in Pennsylvania state court. That action (*Heineman I*) was removed to the Eastern District of Pennsylvania, where it was docketed and litigated as part of MDL No. 1203 before the Honorable Harvey Bartle III.¹ In 2013, the transferee court granted defendants' motion to transfer *Heineman I* to the District of Colorado under 28 U.S.C. § 1404. *Heineman I* thereafter proceeded toward trial in Colorado.² A few months before the anticipated trial date, however, the parties reached a settlement, which led to the voluntary dismissal of *Heineman I* earlier this year. A dispute regarding that settlement—specifically as to whether Wyeth must deduct a percentage of the settlement proceeds for payment to an attorney fee and cost account established in MDL No. 1203—resulted in the filing of *Heineman II*, in which the plaintiffs seek declaratory relief with respect to the proposed deduction.

Plaintiffs contend that *Heineman II* should not be transferred to the MDL No. 1203 transferee court because: (a) that court lost all jurisdiction over this litigation when it transferred *Heineman I* to the District of Colorado in 2013; (b) pretrial proceedings are complete in the MDL and discovery in *Heineman II* will be limited to examination of the confidential settlement agreement between the parties; and (c) the plaintiffs' management committee in MDL No. 1203 has not moved to intervene in this dispute.

¹ See *Heineman v. Am. Home Prods. Corp.*, C.A. No. 2:12-20002 (E.D. Pa.).

² See *Heineman v. Am. Home Prods. Corp.*, C.A. No. 1:13-02070 (D. Colo.).

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These arguments are not persuasive. The transfer of *Heineman I* to the District of Colorado in 2013 does not bar transfer of *Heineman II* to MDL No. 1203 if such transfer satisfies the requirements of Section 1407. Pretrial proceedings are proceeding apace in the actions that remain in MDL No. 1203. Pretrial proceedings also remain in the recently-filed *Heineman II*, resolution of which will turn not only on examination of the parties' settlement agreement, but also on the various pretrial orders entered by the transferee court in MDL No. 1203 regarding assessments for attorney fees and costs. The interpretation, application, and enforcement of such pretrial orders cuts to the heart of a transferee court's ability to manage pretrial litigation. Indeed, the inconsistent interpretation and application of such pretrial orders could result in the breakdown of the leadership structure established in the MDL and delay the prosecution of the remaining actions in the MDL. That the plaintiffs' leadership in MDL No. 1203 has not taken any action yet with respect to Wyeth's motion to transfer is not dispositive in our analysis of the merits of this motion.

After considering all arguments of counsel, we find that *Heineman II* involves common questions of fact with the actions previously transferred to MDL No. 1203, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Resolution of *Heineman II* likely will require the interpretation and possibly enforcement of pretrial orders entered in MDL No. 1203—tasks that can be most efficiently conducted by the transferee court, which issued those orders.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the Honorable Harvey Bartle III for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

**IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION**

MDL No. 1203

SCHEDULE A

District of Colorado

HEINEMAN, ET AL. v. WYETH LLC, C.A. No. 1:15-01331