

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

**IN RE: AREDIA AND ZOMETA PRODUCTS  
LIABILITY LITIGATION**

MDL No. 1760

**ORDER VACATING CONDITIONAL REMAND ORDER**

**Before the Panel:**\* Pursuant to Rule 10.2, plaintiffs in the three actions listed on Schedule A move to vacate our order, entered following receipt of the transferee judge's December 9, 2013, Suggestion of Remand, conditionally remanding the actions from MDL No. 1760 to their transferor court, the Southern District of New York. Defendant Novartis Pharmaceuticals Corporation (Novartis) did not respond to the motion.

Our review of the record indicates that the transferee judge's Suggestion of Remand was predicated on, *inter alia*, the absence of any pending motions in these actions. No motions were pending in these actions on November 25, 2013 – when the presiding magistrate judge issued an order stating that, barring the filing of any objections on or before December 6, 2013, he would recommend that a Suggestion of Remand be entered. On December 5, 2013, a motion to substitute was filed in each of the actions. Thereafter, Novartis responded in opposition, and, in two of the actions, moved to dismiss.

Shortly after the Suggestion issued, the magistrate judge learned of the pendency of these motions,<sup>1</sup> and issued an order directing the parties to affirmatively state whether the cases were ready for remand. In that order, the magistrate judge stated that he would recommend to the transferee judge that the Suggestion be rescinded if the parties informed him that they did not agree on the appropriateness of remand. Plaintiffs responded that they opposed remand until the substitution-related issues in their actions were resolved. In light of these unusual circumstances, we conclude that vacatur of our conditional remand order is warranted.<sup>2</sup>

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\* Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

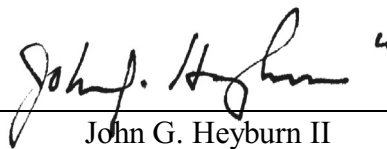
<sup>1</sup> Unfortunately, in their motions to substitute, plaintiffs did not reference the magistrate judge's November 25, order.

<sup>2</sup> We note that on February 7, 2014, the transferee judge issued an order adopting the magistrate judge's recommendation that "absent good cause shown," decision on "all future substitution-related motions to dismiss based on allegations of failure to comply with state law" would be "deferred" to the transferor courts. On its face, this order does not appear to apply to the three actions now before us, however, as the motions therein were filed in either December or early January.

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IT IS THEREFORE ORDERED that the conditional remand order filed on December 13, 2013, is vacated insofar as it relates to these actions.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written above a horizontal line.

John G. Heyburn II  
Chairman

Charles R. Breyer  
Ellen Segal Huvelle

Sarah S. Vance

**IN RE: AREDIA AND ZOMETA PRODUCTS  
LIABILITY LITIGATION**

MDL No. 1760

**SCHEDULE A**

Southern District of New York

KUZARA V. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 1:06-04463  
(M.D. Tennessee, C.A. No. 3:06-00817)

MARTIN V. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 1:06-06506  
(M.D. Tennessee, C.A. No. 3:06-01031)

DAVIS V. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 1:06-08297  
(M.D. Tennessee, C.A. No. 3:07-00007)