

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

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

MDL No. 1760

**REMAND ORDER**

**Before the Panel:** Pursuant to Rule 10.2, plaintiffs in the five actions listed on Schedule A move to vacate our order, entered at the suggestions of the transferee court, conditionally remanding the actions from MDL No. 1760 to their respective transferor courts. Defendant Novartis Pharmaceuticals Corporation (Novartis) opposes the motion. These five actions were transferred to the MDL in 2006, and the original plaintiffs died some years ago.<sup>1</sup>

In considering the question of Section 1407 remand, we typically accord substantial deference to the transferee judge's determination that remand of a particular action (or actions) is appropriate. *See, e.g., In re: Columbia/HCA Healthcare Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008) (“In considering the question of remand, the Panel has consistently given great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate because the transferee judge, after all, supervises the day-to-day pretrial proceedings.”) (quoting *In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977)). We see no reason to deviate from this deference here.

In arguing against remand, plaintiffs say that they should be allowed to complete the probate process prior to remand, because otherwise Novartis undoubtedly will move to dismiss post-remand for failure to comply with the plaintiff substitution provisions in the transferee court's Case Management Order.<sup>2</sup> This argument is unpersuasive. Although plaintiffs represent that they are at “some stage” of completing the probate process, they offer no specifics regarding what remains to be done in that process, what efforts, if any, they have made to expedite the process, or how much additional time will be required to complete the process. They also fail to identify any attempts they made to apprise the transferee court of any difficulties that they have experienced with regard to the process, or to request more time in connection therewith. Regardless, the transferor courts can resolve these issues appropriately.

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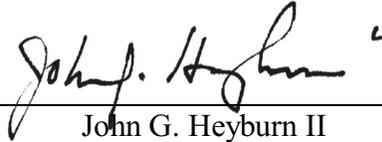
<sup>1</sup> The original plaintiff in the *Traphagen* action passed away most recently – in May 2010.

<sup>2</sup> Paragraph V.C. of the Case Management Order specifies the content and timing of a motion for substitution. In particular, subparagraph V.C.2.b provides that where no personal representative has been appointed by the deadline for filing a motion for substitution, the transferee court may provisionally permit substitution on, *inter alia*, the condition that – prior to remand – the substituted plaintiff submit a copy of the order appointing him or her as the deceased plaintiff's personal representative.

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IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions on Schedule A are remanded to their respective transferor courts.

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

Kathryn H. Vratil  
Marjorie O. Rendell  
Lewis A. Kaplan

Paul J. Barbadoro  
Charles R. Breyer  
Sarah S. Vance

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

MDL No. 1760

**SCHEDULE A**

Middle District of Tennessee

- James Marsh v. Novartis Pharmaceuticals Corporation, C.A. No. 3:06-00503  
(E.D. New York, C.A. No. 1:06-01086)
- Robert Traphagen v. Novartis Pharmaceuticals Corporation, C.A. No. 3:06-00744  
(S.D. New York, C.A. No. 1:06-04112)
- Rose Mary Meierhofer v. Novartis Pharmaceuticals Corporation, C.A. No. 3:06-00816  
(S.D. New York, C.A. No. 1:06-04462)
- Scott Carpenter v. Novartis Pharmaceuticals Corporation, C.A. No. 3:06-00860  
(S.D. New York, C.A. No. 1:06-05516)
- Natalie Goldstein v. Novartis Pharmaceuticals Corporation, C.A. No. 3:06-00863  
(S.D. New York, C.A. No. 1:06-05512)