

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FOSAMAX PRODUCTS LIABILITY LITIGATION

Drussie Johnson v. Hoffman-La Roche Inc., et al.,)
S.D. Mississippi, C.A. No. 3:11-00181) MDL No. 1789

**ORDER OF TRANSFER WITH SIMULTANEOUS SEPARATION AND
REMAND OF CERTAIN CLAIMS**

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff and defendants Hoffman-La Roche Inc. and Roche Laboratories Inc. (collectively Roche) have separately moved to vacate our order conditionally transferring this action (*Johnson*) to MDL No. 1789, to the extent that the order simultaneously separated and remanded, to the Southern District of Mississippi, plaintiff’s claims involving a bisphosphonate drug other than Fosamax – specifically, Roche’s Boniva. No party responded in opposition to the motions.

In support of transfer of her Boniva claims to the MDL, the *Johnson* plaintiff points out that she is alleging that she developed osteonecrosis of the jaw from taking both Fosamax and Boniva. She argues that leaving her Boniva claims in the Southern District of Mississippi would likely result in a continuation of the present stay until such time as her Fosamax claims are remanded at or before the conclusion of pretrial proceedings in the MDL. In our view, however, it is not apparent that the Southern District of Mississippi court would continue the stay (which is in place pending our ruling on the motions to vacate) or, indeed, why continuation of the stay would be necessary. For example, the fact that plaintiff’s Fosamax claims will be before the transferee court will not bar plaintiff and Roche from engaging in at least some discovery specific to Boniva and plaintiff’s ingestion thereof. It is also not apparent that transferring the entire *Johnson* action to the MDL would remedy plaintiff’s concerns. Although there are a small number of Boniva claims already in the MDL No. 1789, the clear focus of the MDL – since it was created almost six years ago – has been and is on Fosamax.

In its motion to vacate, Roche argues that we have recently transferred non-Fosamax claims to the second Fosamax MDL – In re: Fosamax (Aledronate Sodium) Products Liability Litigation (No. II).¹ See, e.g., MDL No. 2243 Transfer Order (J.P.M.L. Feb. 3, 2012) (doc. no. 276). We centralized that MDL, however, in May 2011, and pretrial proceedings therein are still at a very early

* Judge Kathryn H. Vratil took no part in the decision of this matter.

¹ The actions in MDL No. 2243 “share questions of fact arising from similar allegations that use of Fosamax or its generic equivalent caused femur fractures or similar bone injuries.” *In re: Fosamax (Aledronate Sodium) Prods. Liab. Litig. (No. II)*, 787 F. Supp. 2d 1355, 1356 (J.P.M.L. 2011).

- 2 -

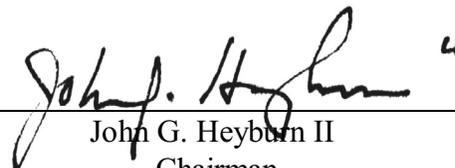
stage.² Integrating non-Fosamax claims into that MDL is appreciably more practicable than it would be in MDL No. 1789, where pretrial proceedings are at a more advanced stage by degrees of magnitude.³

After considering all argument of counsel, we find that the Fosamax claims in *Johnson* involve common questions of fact with actions in this litigation previously transferred to MDL No. 1789, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our original order directing centralization. In that order, we held that the Southern District of New York was an appropriate Section 1407 forum for actions “present[ing] complex common factual questions concerning, among other things, 1) the development, testing, manufacturing and marketing of Fosamax, and 2) Merck's knowledge concerning the drug's alleged adverse effects, in particular, osteonecrosis of the jaw.” *In re: Fosamax Prods. Liab. Litig.*, 444 F. Supp. 2d 1347, 1349 (J.P.M.L. 2006). Here, the *Johnson* plaintiff alleges that she developed osteonecrosis of the jaw after taking Fosamax. For the reasons stated above, however, we also find that transfer of the *Johnson* plaintiff's Boniva claims would not serve Section 1407's purposes.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable John F. Keenan for inclusion in the coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 1407(a), plaintiff's claims against defendants Hoffman-La Roche Inc. and Roche Laboratories Inc. are simultaneously separated and remanded to the Southern District of Mississippi.

PANEL ON MULTIDISTRICT LITIGATION



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² The MDL was reassigned to the Honorable Joel A. Pisano in late November 2011, in connection with the initial transferee judge's retirement.

³ We note that the transferee judge, the Honorable John F. Keenan, already has conducted four bellwether trials to date.