

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: DENTURE CREAM PRODUCTS
LIABILITY LITIGATION

Michelle Mantia, et al. v. The Procter & Gamble)	
Distributing LLC, et al., E.D. Missouri,)	MDL No. 2051
C.A. No. 4:13-02239)	

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs move to vacate our order that conditionally transferred their action (*Mantia*) to MDL No. 2051. Defendants The Procter & Gamble Manufacturing Company, The Procter & Gamble Company, and The Procter and Gamble Distributing LLC (collectively P&G) oppose the motion to vacate and favor inclusion of this action in MDL No. 2051.

After considering all argument of counsel, we find that *Mantia* shares questions of fact with actions in this litigation previously transferred to the Southern District of Florida, and that transfer of this action to MDL No. 2051 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Like many of the already-centralized actions, *Mantia* involves factual questions arising from allegations that the levels of zinc contained in denture cream manufactured by P&G can cause neurological injuries. *See In re: Denture Cream Prods. Liab. Litig.*, 624 F. Supp. 2d 1379, 1380-81 (J.P.M.L. 2009).

In support of their motion to vacate, plaintiffs argue that federal jurisdiction does not exist in this case and that a motion to remand to state court is pending. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present such arguments to the transferee judge.¹ *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F.

* Two Panel members have interests that would normally disqualify them under 28 U.S.C. § 455 from participating in the decision of this matter. Accordingly, the Panel invoked the Rule of Necessity and all Panel members present at the January 2014 hearing participated in the decision of this matter in order to provide the forum created by the governing statute, 28 U.S.C. § 1407. *See In re: Adelpia Commc'ns Corp. Sec. & Derivative Litig. (No. II)*, 273 F. Supp. 2d 1353 (J.P.M.L. 2003); *In re: Wireless Telephone Radio Frequency Emissions Prods. Liability Litig.*, 170 F. Supp. 2d 1356 (J.P.M.L. 2001). Judge Paul J. Barbadoro and Judge Lewis A. Kaplan were not present and did not participate in the disposition of this matter.

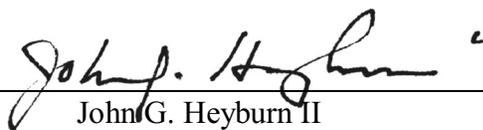
¹ Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not
(continued...)

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Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Plaintiffs also argue that MDL No. 2051 is too procedurally advanced for this action to benefit from transfer. We are not persuaded that pretrial proceedings have reached the point that the transfer of tag-along actions no longer is appropriate. Proceedings in MDL No. 2051 are ongoing and a relevant appeal is pending.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of Florida and, with the consent of that court, assigned to the Honorable Cecilia M. Altonaga for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Marjorie O. Rendell
Sarah S. Vance

Charles R. Breyer
Ellen Segal Huvelle

¹(...continued)

limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand or other motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so.