UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: DENTURE CREAM
PRODUCTS LIABILITY LITIGATION

Michael Niles, et al. v. The Procter and Gamble	)	
Distributing LLC, et al.,	)	MDL No. 2051
W.D. Oklahoma, C.A. No. 5:12-00709	)	

TRANSFER ORDER

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

This action (*Niles*) alleges neurological injury attributed to the use of Fixodent denture cream, which plaintiffs allege contains excess zinc. The actions centralized in MDL No. 2051 involve similar allegations that the levels of zinc contained in certain brands of denture cream can cause copper deficiency and neurological injuries. *See In re: Denture Cream Prods. Liab. Litig.*, 624 F. Supp. 2d 1379, 1380-81 (J.P.M.L. 2009).

It is undisputed that this action shares questions of fact with the actions comprising MDL No. 2051. In support of their motion to vacate, plaintiffs argue that pretrial proceedings in this docket are substantially completed, and if plaintiffs choose to file a motion to remand their action to state court, such a motion should be heard by the transferor court. Plaintiffs, however, have not filed a motion to remand. Even if they had done so, as the Panel has often held, jurisdictional issues do not present an impediment to transfer, as plaintiffs can present such arguments to the transferee judge. *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Furthermore, generic expert discovery, *Daubert* motions and dispositive motions based on issues relating to general causation are ongoing in this litigation. We are not persuaded that the status of proceedings in MDL No. 2051 is so advanced that the *Niles* action would not benefit from coordinated discovery and pretrial proceedings.

Consequently, after considering all argument of counsel, we find that *Niles* 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.

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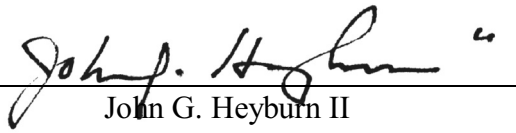
[*] Judge Marjorie O. Rendell took no part in the decision of this matter.

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



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