

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FOSAMAX (ALENDRONATE SODIUM)
PRODUCTS LIABILITY LITIGATION (NO. II)

Martha Haslam, et al. v. Merck Sharp & Dohme Corp., et al.,)
S.D. Florida, C.A. No. 0:12-60918) MDL No. 2243

TRANSFER ORDER

Before the Panel:* Pursuant to Rule 7.1, plaintiffs in this action (*Haslam*) move to vacate our order conditionally transferring the action to the District of New Jersey for inclusion in MDL No. 2243. Responding defendants Merck Sharp & Dohme Corp., Apotex Corp., GlaxoSmithKline LLC, Hoffman La-Roche Inc., and Roche Laboratories Inc. oppose the motion.

In their motion to vacate, the *Haslam* plaintiffs argue that the Panel should permit the Southern District of Florida court to rule on their pending remand motion. They contend that if the action is transferred before that motion is decided, an earlier ruling by the transferee court would “effectively estop[]” them from arguing that remand is warranted.¹ As we have repeatedly held, however, “[t]he prospect of an unfavorable ruling by the transferee court . . . is not a factor considered by the Panel in determining whether transfer under Section 1407 is appropriate.” *In re Air Crash Disaster at Paris, France, on Mar. 3, 1974*, 386 F. Supp. 1404, 1405 (J.P.M.L. 1975); *see also In re 7-Eleven Franchise Antitrust Litig.*, 358 F. Supp. 286, 287-88 (J.P.M.L. 1973) (same); *In re Texas Gulf Sulphur Sec. Litig.*, 344 F. Supp. 1398, 1400 (J.P.M.L. 1972) (same).

After considering all argument of counsel, we find that the *Haslam* action shares factual issues with actions previously transferred to MDL No. 2243, 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 District of New Jersey was an appropriate Section 1407 forum for actions “shar[ing] questions of fact arising from similar allegations that use of Fosamax or its generic equivalent cause[s] femur fractures or similar bone injuries.” *In re: Fosamax (Alendronate Sodium) Prods. Liab. Litig.*

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

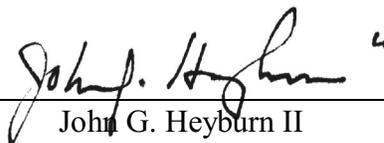
¹ In that ruling, the transferee judge dismissed all state tort claims against the defendant generic manufacturers of alendronate sodium as preempted under *Pliva, Inc. v. Mensing*, 131 S. Ct. 2567 (2011). *See In re Fosamax (Alendronate Sodium) Prods. Liab. Litig.*, 2011 WL 5903623 (D. N.J. Nov. 21, 2011).

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(*No. II*), 787 F. Supp. 2d 1355, 1356 (J.P.M.L. 2011). Similar to plaintiffs in actions previously centralized in this MDL, the *Haslam* plaintiffs, a husband and wife, allege that the latter suffered severely suppressed bone turnover and sustained multiple femur fractures as a result of taking Fosamax, Boniva (another bisphosphonate drug at issue in the MDL), and/or generic alendronate sodium.

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

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
Barbara S. Jones
Charles R. Breyer

W. Royal Furgeson, Jr.
Paul J. Barbadoro