

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

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

Frances Maher v. Novartis Pharmaceuticals Corporation, et al.,     )  
E.D. Virginia, C.A. No. 1:13-00728   )     MDL No. 2243

**TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiff in this action (*Maher*) moves to vacate, in part, our order conditionally transferring the action to the District of New Jersey for inclusion in MDL No. 2243. Responding defendants Novartis Pharmaceuticals Corporation and Warner Chilcott (US), LLC, oppose the motion.

In her motion, the *Maher* plaintiff argues that we should vacate the order, in part, so that her non-Fosamax claims – specifically, her claims relating to the drugs Actonel and Reclast – remain in the Eastern District of Virginia, the court in which she commenced suit. Fosamax, Actonel, and Reclast, while all bisphosphonate drugs, are manufactured and distributed by different companies, and plaintiff contends that discovery in the action will be largely unique to each company. We are unpersuaded by this argument, because there already are numerous actions in the MDL in which the subject plaintiffs allege that they suffered femur fractures as a result of taking Fosamax as well as one or more other bisphosphonates – including Actonel and Reclast. Furthermore, plaintiff expressly alleges an indivisible injury resulting from her successive ingestion of the three drugs. *See* Compl. ¶ 4 (“[P]laintiff suffered frozen bone caused by these drugs acting individually and cumulatively which resulted in spontaneous fractures of her bone.”).

After considering all argument of counsel, we find that the *Maher* 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. (No. II)*, 787 F. Supp. 2d 1355, 1356 (J.P.M.L. 2011). Similar to plaintiffs in actions

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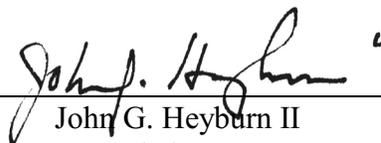
\* Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

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previously centralized in this MDL, the *Maier* plaintiff alleges that she suffered “frozen bone”<sup>1</sup> as a result of taking Fosamax (from 2000 to 2007), Actonel (from on or about 2007 to 2010), and Reclast (from on or about 2010).

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

  
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John G. Heyburn II  
Chairman

Paul J. Barbadoro  
Sarah S. Vance

Charles R. Breyer  
Ellen Segal Huvelle

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<sup>1</sup> The complaint describes frozen bone as a condition marked and caused by decreased osteoclastic and osteoblastic activity which makes the bone brittle and long bone and other fractures more likely.