

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: PROPECIA (FINASTERIDE)
PRODUCTS LIABILITY LITIGATION**

MDL No. 2331

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiff in the action listed on Schedule A moves to vacate our order that conditionally transferred his action to MDL No. 2331. Defendant Merck & Co., Inc. opposes the motion to vacate.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2331, 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 order directing centralization. In that order, we held that the Eastern District of New York was an appropriate Section 1407 forum for actions sharing allegations that use of finasteride, the active ingredient in Propecia and Proscar, causes persistent sexual dysfunction in a subset of men who took the drug, sometimes even after discontinuation of use of the drug. *See In re: Propecia (Finasteride) Products Liability Litig.*, 856 F. Supp. 2d 1334, 1335 (J.P.M.L. 2012). This action involves similar alleged injuries arising from the use of finasteride, and clearly falls within the MDL's ambit.

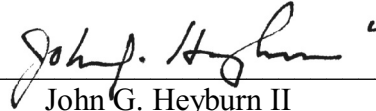
Plaintiff does not dispute that his action shares questions of fact with actions pending in MDL No. 2331. Plaintiff instead bases his arguments against transfer primarily on the pendency of his motion to remand the actions to state court and the purported inefficiencies in having the MDL judge decide such a motion. Plaintiff can present his motion for remand to the transferee judge.¹ *See, e.g., In re: Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

¹ We also will deny plaintiff's alternative request to stay transfer pending resolution of his motion to remand. Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon the remand motion usually has adequate time in which to do so.

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

PANEL ON MULTIDISTRICT LITIGATION



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**IN RE: PROPECIA (FINASTERIDE)
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SCHEDULE A

District of Massachusetts

RAFFERTY V. MERCK & CO., INC., ET AL., C.A. No. 1:14-10252