

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

**IN RE: SKELAXIN (METAXALONE) ANTITRUST LITIGATION**

SigmaPharm, Inc. v. Mutual Pharmaceutical Company, Inc., et al., )  
E.D. Pennsylvania, C.A. No. 2:12-02522 ) MDL No. 2343

**ORDER VACATING CONDITIONAL TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Rule 7.1, plaintiff SigmaPharm, Inc., moves to vacate our order conditionally transferring this action (*SigmaPharm*) to MDL No. 2343. Defendants Mutual Pharmaceutical Company, Inc. (Mutual), United Research Laboratories, Inc, Richard Roberts M.D., Ph.D., Pharmaceutical IP Holdings, Inc., and Pharmaceutical Holdings Co., Inc., oppose this motion.

The Panel originally centralized in MDL No. 2343 actions sharing common questions of fact arising from an alleged unlawful “stand-down” agreement between Mutual and King Pharmaceuticals, Inc. (King), pursuant to which King allegedly paid Mutual not to sell generic versions of King’s brand-name drug Skelaxin (Metaxalone). More specifically, the MDL plaintiffs allege that King, which manufactures and sells Skelaxin, illegally delayed entry of generic versions of the drug into the marketplace by: (1) pursuing sham patent litigation against generic competitors to enforce key Skelaxin patents; (2) entering into an unlawful “stand-down” agreement with Mutual, in which Mutual agreed to support King’s efforts to suppress other generic competitors and cease seeking approval of its own generic version of Skelaxin; and (3) cooperating with Mutual to file a series of sham Citizen Petitions with the FDA designed to delay FDA approval and thus market entry of other would-be generic competitors. The antitrust plaintiffs in this MDL allege that this conduct constitutes unlawful anticompetitive behavior in violation of federal and state antitrust and unfair competition laws. *See In re Skelaxin (Metaxalone) Antitrust Litig.*, 856 F. Supp. 2d 1350 (J.P.M.L. 2012).

In opposing transfer, plaintiff argues, *inter alia*, that *SigmaPharm* differs from the previously-centralized actions because *SigmaPharm* does not involve federal antitrust claims, but rather claims for breach of contract, fraud, and violations of the New Jersey Racketeer Influenced and Corrupt Organizations Act. Plaintiff also contends that *SigmaPharm* differs because it is not a class action and because the alleged conspiracy is directed towards evasion of Mutual’s contractual obligations to SigmaPharm under a technology licensing agreement.

After considering all argument of counsel, we conclude that inclusion of this action in MDL No. 2343 would not necessarily serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. Although Defendants are correct that there is some factual overlap between *SigmaPharm* and the actions in MDL No. 2343, the differences between these

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\* Judge John G. Heyburn II took no part in the decision of this matter.

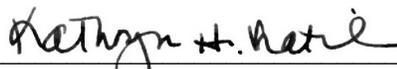
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actions are significant. Plaintiff's complaint focuses on its contractual relationship with Mutual and the breakdown of that relationship. The alleged Skelaxin stand-down agreement and Mutual's and King's alleged conduct in furtherance of the agreement are implicated only in the context of their effect on the relationship between SigmaPharm and Mutual. Further, *SigmaPharm* is neither an antitrust action nor a class action, but an individual tort and contract action. Plaintiff is neither a direct nor an indirect purchaser of Skelaxin, but a single company who is a party to a development agreement with one of the MDL defendants. MDL No. 2343 already has been organized into three separate tracks involving direct purchaser antitrust claims, indirect purchaser antitrust claims, and end-user antitrust claims. Shoehorning this unique action into an MDL that contains only antitrust actions may be difficult and is unlikely to result in convenience or efficiencies.<sup>1</sup> Indeed, inclusion of the unique fact and legal issues present in *SigmaPharm* in this MDL may delay resolution of both *SigmaPharm* and the centralized actions.

We recognize that, should the transferor court deny plaintiff's pending motion to remand (as to which this Panel takes no position), there may be some overlapping discovery and pretrial motion practice with regard to the alleged stand-down agreement itself. In this instance, informal cooperation among counsel and coordination among the involved courts are, in our judgment, preferable to transfer of *SigmaPharm* to the MDL. Notices of deposition can be filed in related actions; the parties can stipulate that any discovery relevant to both SigmaPharm and the MDL can be used in both; or the involved courts may direct the parties to coordinate their pretrial activities. *See In re Crest Sensitivity Treatment & Protection Toothpaste Mktg. and Sales Practices Litig.*, 867 F. Supp. 2d 1348 (J.P.M.L. 2012). Such alternative means of coordination are particularly appropriate here where no proliferation of actions outside the MDL is anticipated.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-3" is vacated insofar as it relates to this action.

## PANEL ON MULTIDISTRICT LITIGATION



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Kathryn H. Vratil  
Acting Chairman

W. Royal Furgeson, Jr.  
Marjorie O. Rendell  
Lewis A. Kaplan

Paul J. Barbadoro  
Charles R. Breyer

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<sup>1</sup> There is, of course, no bar to including individual actions and actions with different types of claims in an MDL where there are common questions of fact, *provided* that centralization will advance the statutory goals of convenience and efficiency.