

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NEXIUM (ESOMEPRAZOLE)
ANTITRUST LITIGATION

MDL No. 2409

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in an action listed on Schedule A and pending in the Eastern District of Pennsylvania move to vacate our order that conditionally transferred the action to the District of Massachusetts for inclusion in MDL No. 2409. All responding defendants¹ oppose the motion.

In their motion to vacate, plaintiffs principally argue that this action was improperly removed from Pennsylvania state court. As we frequently have held, however, the pendency of jurisdictional objections is not, as a general matter, a sufficient reason to delay or deny transfer.² Plaintiffs further argue that transfer is inappropriate because this action was removed on Class Action Fairness Act (CAFA) “mass action” grounds, as well as federal question grounds. CAFA prohibits transfer under 28 U.S.C. § 1407 of an action removed on mass action grounds, absent a request by a majority of the plaintiffs therein. *See* 28 U.S.C. § 1332(d)(11)(C)(i). We have held that prohibition is not an impediment to transfer where other grounds for federal jurisdiction also are asserted. *See In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 939 F. Supp. 2d 1376, 1381 (J.P.M.L. 2013).

Plaintiffs suggest that we revisit our April 2013 *Darvocet* decision because of the potential for defendants to assert “objectively unreasonable” grounds for removal, in addition to CAFA mass action grounds, in order to evade the prohibition on Section 1407 transfer contained in 28 U.S.C.

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

¹ Responding defendants include: AstraZeneca LP, AstraZeneca AB, and Aktiebolaget Hassle (collectively, AstraZeneca); Ranbaxy Pharmaceuticals, Inc., Ranbaxy Laboratories Ltd., and Ranbaxy, Inc. (Ranbaxy); Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (Teva); and Dr. Reddy’s Laboratories, Ltd., and Dr. Reddy’s Laboratories, Inc. (DRL).

² 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 generally has adequate time in which to do so.

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§ 1332(d)(11)(C)(i). The Panel lacks the authority to assess the reasonableness of the grounds asserted for removal, and we recently have rejected requests that we do so. *See, e.g., In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, MDL No. 2502, ECF No. 443, at 1 (J.P.M.L. Jun. 6, 2014) (Transfer Order) (citing *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990)). Plaintiffs therefore ask us to return to the Panel’s practice before our *Darvocet* opinion of deferring decision on the transfer of an action removed on mass action grounds until the putative transferor court has ruled on plaintiffs’ motion to remand and thus determined the proper ground or grounds (if any) for removal. As we discussed in *Darvocet*, however, that prior practice was followed before the Panel fully considered and reached the issue of “the precise impact of Section 1332(d)(11)(C)(i).” *Darvocet*, 939 F. Supp. 2d at 1378-79.

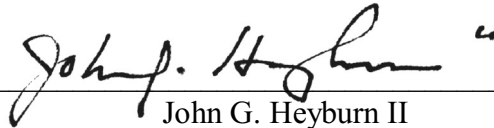
Plaintiffs’ arguments do not undermine our basic reasoning in *Darvocet* that nothing in CAFA or its legislative history suggests that Congress “intended the mass action provision to render a case that otherwise would have been within the Panel’s purview—*e.g.*, a case removed on diversity or federal question grounds—not transferrable merely because the defendant has cited the mass action provision as an additional ground in its notice of removal.” *See id.* at 1379. Accordingly, we reject plaintiffs’ request to defer our consideration of the transfer of this action.

After considering all argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2409, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the District of Massachusetts was an appropriate Section 1407 forum for actions sharing factual questions arising out of allegations that defendants violated federal and state antitrust laws by excluding generic competition for Nexium through, among other things, entering into reverse payment agreements in which AstraZeneca allegedly agreed to pay the generic manufacturer defendants (Ranbaxy, Teva, and DRL) substantial sums in exchange for delaying entry of their less expensive generic versions of Nexium into the market. *See In re Nexium (Esomeprazole) Antitrust Litig.*, 908 F. Supp. 2d 1360 (J.P.M.L. 2012). Plaintiffs do not dispute that their action shares multiple factual issues with those already in the MDL.

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IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the action listed on Schedule A is transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable William G. Young for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "John G. Heyburn II", is written above a horizontal line. The signature is cursive and includes a small mark at the end.

John G. Heyburn II
Chairman

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Sarah S. Vance

**IN RE: NEXIUM (ESOMEPRAZOLE)
ANTITRUST LITIGATION**

MDL No. 2409

SCHEDULE A

Eastern District of Pennsylvania

CARITEN INSURANCE COMPANY, ET AL. v. ASTRAZENECA AB, ET AL.,
C.A. No. 2:14-04156