

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NEW ENGLAND COMPOUNDING PHARMACY, INC.,
PRODUCTS LIABILITY LITIGATION

Mary Sharon Walker v. New England Compounding Pharmacy, Inc., et al., W.D. Virginia, C.A. No. 7:12-00564)	
Basil E. Proffitt v. New England Compounding Pharmacy, Inc., et al., W.D. Virginia, C.A. No. 7:12-00615)	MDL No. 2419

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, defendant Image Guided Pain Management, P.C., d/b/a Insight Imaging-Roanoke (“IGPM”) moves to vacate our order conditionally transferring two actions (*Walker* and *Proffitt*) to MDL No. 2419. The Chapter 11 Trustee for the New England Compounding Center (“NECC”) in the related bankruptcy action and the Official Committee of Unsecured Creditors oppose the motion to vacate. Plaintiffs have not filed a response.

In support of its motion to vacate, defendant IGPM argues that transfer would not promote the just and efficient conduct of the actions because the transferor court is poised to rule on motions to dismiss pending before it. IGPM also argues that the actions present unique factual questions about its relationship with another entity involved in the purchase of the NECC product at issue and the proper interpretation of Virginia law, and that proceedings on these issues will be most convenient in Virginia. We find these arguments unpersuasive. After the filing of defendant’s motion to vacate, the transferor judge issued an opinion staying proceedings in these actions pending the resolution of the Section 1407 motion before the Panel and related motions before the transferee court. Moreover, transfer under Section 1407 does not require a complete identity of common factual issues as a prerequisite to transfer, and the presence of additional facts or differing legal theories is not significant when, as here, the actions still arise from a common factual core. *See, e.g., In re: Blue Cross Blue Shield Antitrust Litig.*, — F. Supp. 2d —, 2012 WL 6554004, at *1 (J.P.M.L. Dec. 12, 2012). While transfer of a particular action might inconvenience some parties to the action, such transfer is often necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

After considering all argument of counsel, we find that the actions share questions of fact with actions in this litigation previously transferred to the District of Massachusetts, and that transfer of these actions to the District of Massachusetts for inclusion in MDL No. 2419 will serve the

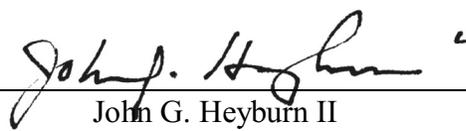
* Judge Marjorie O. Rendell took no part in the decision of this matter.

-2-

convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.¹ Like many of the already-centralized actions, the *Walker* and *Proffitt* actions share questions of fact concerning “injuries arising from the alleged contamination of the injectable steroid methylprednisolone acetate at the New England Compounding Pharmacy facility in Framingham, Massachusetts, which allegedly resulted in a multistate outbreak of hundreds of cases of fungal meningitis and other infections.” See *In re: New England Compounding Pharm., Inc., Prods. Liability Litig.*, — F. Supp. 2d — , 2013 WL 595774, at *1 (J.P.M.L. Feb. 12, 2013).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable F. Dennis Saylor IV for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Lewis A. Kaplan

W. Royal Furgeson, Jr.
Charles R. Breyer

¹ The transferee judge recently resolved a separate motion to transfer all related state and federal actions nationwide to the District of Massachusetts based on 28 U.S.C. § 1334. See *In re: New England Compounding Pharm., Inc., Prods. Liability Litig.*, No. 13-md-2419, slip op. at 1-3 (D. Mass. filed May 31, 2013). The court granted the motion in most respects (carving out one category of state court actions). With respect to the mechanics of transfer, the court stated that it intended to rely on the Section 1407 transfer process to ensure that related cases currently pending in other federal courts are transferred to the District of Massachusetts. *Id.* at 10, 27 (stating that the court “will await the JPML’s transfer orders for any cases now pending in other federal courts or that are in the process of being removed”). Thus, the Panel will continue to resolve whether transfer of these and other potential tag-along actions is appropriate under Section 1407.