

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: LIPITOR (ATORVASTATIN CALCIUM)
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION (NO. II)**

MDL No. 2502

TRANSFER ORDER

Before the Panel:* Plaintiffs in two Eastern District of Michigan actions (*Trees* and *Bearup*) listed on the attached Schedule A separately move under Panel Rule 7.1 to vacate our order conditionally transferring the actions to the District of South Carolina for inclusion in MDL No. 2502. Defendants Pfizer Inc., Pfizer International LLC, and Greenstone LLC filed a collective response in opposition to the motions. Defendant Sam's East, Inc., which is sued only in the *Bearup* action, responded in opposition to that plaintiff's motion.

In support of their motions to vacate, plaintiffs argue that their actions were improperly removed, assert that they would be inconvenienced by transfer, and contend that they raise only Michigan law claims. These arguments are unconvincing. First, the Panel routinely has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present their arguments regarding those issues to the transferee judge.¹ Second, in deciding issues of Section 1407 transfer, the Panel looks to the overall convenience of the parties and witnesses in the litigation as a whole.² Third, the presence of unique claims is not an impediment to transfer, where, as here, common factual issues exist.³

* Judge Charles R. Breyer took no part in the decision of this matter. Judge Ellen Segal Huvelle took no part in the decision as to the *Bearup* action.

¹ See, e.g., *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Moreover, under Panel Rule 2.1(d), 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 generally has adequate time to rule on a remand motion if it chooses to do so.

² See *In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

³ E.g., *In re: Blue Cross Blue Shield Antitrust Litig.*, 908 F. Supp. 2d 1373, 1376 (J.P.M.L. 2012) ("[T]he presence of . . . differing legal theories is not significant when the actions still arise from a common factual core.").

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After considering the argument of counsel, we find that the *Trees* and *Bearup* actions involve common questions of fact with actions previously transferred to MDL No. 2502, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions in the MDL “share factual issues arising from common allegations that taking Lipitor can cause women to develop type 2 diabetes.” See *In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig.*, 997 F. Supp. 2d 1354, 1357 (J.P.M.L. 2014). Plaintiffs do not dispute that their actions also share those issues.

IT IS THEREFORE ORDERED that the *Trees* and *Bearup* actions are transferred to the District of South Carolina, and, with the consent of that court, assigned to the Honorable Richard M. Gergel for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

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SCHEDULE A

Eastern District of Michigan

TREES v. PFIZER, INC., ET AL., C.A. No. 2:15-13993

BEARUP, ET AL. v. PFIZER, INC., ET AL., C.A. No. 5:15-13995