

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:* Pursuant to Panel Rule 7.1, plaintiffs in the Central District of California action (*Garabedian*) listed on the attached Schedule A move to vacate our order conditionally transferring the action to the District of South Carolina for inclusion in MDL No. 2502. Defendants Pfizer Inc. and McKesson Corporation oppose the motion.

In their motion to vacate, the *Garabedian* plaintiffs principally argue that their action was improperly removed from California 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. 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 the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so.

We addressed the *Garabedian* plaintiffs' other arguments in our recent orders denying motions to vacate filed by plaintiffs in 84 other California actions, which, like *Garabedian*, were removed on both Class Action Fairness Act (CAFA) "mass action" grounds and diversity grounds. See Transfer Order (J.P.M.L. June 6, 2014) (ECF No. 443); Transfer Order (J.P.M.L. Aug. 12, 2014) (ECF No. 484). In particular, we rejected the suggestion that where an action has been removed on mass action and other grounds, we should assess the reasonableness of those other grounds. See June 6, 2014, Transfer Order, at 1. We held that we lacked such authority. *Id.* (citing *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990)). In addition, we rejected the suggestion that we reconsider our precedent holding that CAFA's prohibition on 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,¹ does not constitute an impediment to transfer where other grounds for federal jurisdiction also are asserted. See *id.* at 2 (reaffirming *In re: Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 939 F. Supp. 2d 1376, 1381 (J.P.M.L. 2013)).

After considering all argument of counsel, we find that the *Garabedian* action involves common questions of fact with actions previously transferred to MDL No. 2502, and that transfer

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

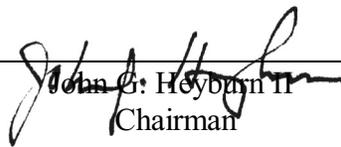
¹ See 28 U.S.C. § 1332(d)(11)(C)(i).

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will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our original order directing centralization. In that order, we held that the District of South Carolina was an appropriate Section 1407 forum for actions “shar[ing] 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). The *Garabedian* plaintiffs do not dispute that their action shares multiple factual issues with those already in the MDL.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is 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



John G. Heyburn II
Chairman

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

Charles R. Breyer
Sarah S. Vance

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SCHEDULE A

Central District of California

GARABEDIAN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-04391