

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**IN RE: TESTOSTERONE REPLACEMENT  
THERAPY PRODUCTS LIABILITY LITIGATION**

MDL No. 2545

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiffs in an action in the Northern District of Indiana move under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action (*Hoholek*), which is listed on the attached Schedule A, to MDL No. 2545. Defendants Abbott Laboratories, Inc., and Abbvie Inc. oppose the motion.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2545, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization. In that order, we held that the Northern District of Illinois was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that the use of one or more testosterone replacement therapies caused plaintiffs or their decedent to suffer injuries such as heart attack, stroke, deep vein thrombosis, or pulmonary embolism. *See In re: Androgel Prods. Liab. Litig.*, 29 F. Supp. 3d 1378 (J.P.M.L. 2014). This action involves allegations that use of AndroGel caused plaintiff's decedent's fatal heart attack and clearly falls within the MDL's ambit.

Plaintiffs do not significantly dispute that this action shares questions of fact with actions pending in MDL No. 2545. Plaintiffs instead base their arguments against transfer primarily on the assertion that federal jurisdiction is lacking. As we have repeatedly stated in transferring other similar cases in this docket, plaintiffs can present any motion for remand to the transferee judge.<sup>1</sup> *See, e.g., In re: Ivy*, 901 F.2d 7, 9 (2nd Cir. 1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Moreover, that this action includes unique defendants—treating physicians who prescribed AndroGel and are accused of medical malpractice—in addition to the manufacturers of AndroGel does not weigh significantly against transfer in these

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\* Judges Lewis A. Kaplan and Ellen Segal Huvelle did not participate in the decision of this matter.

<sup>1</sup> 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 generally has adequate time to rule on a remand motion if it chooses to do so.

-2-

circumstances, given *Hoholek*'s substantial factual overlap with the actions already pending in the MDL proceedings.<sup>2</sup>

IT IS THEREFORE ORDERED that this action is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable Matthew F. Kennelly for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
R. David Proctor

Charles R. Breyer  
Catherine D. Perry

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<sup>2</sup> The *Hoholek* plaintiffs are correct that Indiana has unique pre-suit requirements for the filing of medical malpractice cases. Their case appears to be the only Indiana case in MDL No. 2545 with medical malpractice claims asserted alongside products liability claims. But we do not view Indiana's pre-suit requirements as an impediment to transfer. See MDL No. 2419 – *In re: New England Compounding Pharm., Inc., Prods. Liab. Litig.*, J.P.M.L. CM/ECF doc. 670 at 1 (Dec. 12, 2014) (rejecting healthcare providers' argument that unique pre-suit requirements of state law warranted denial of transfer).

**IN RE: TESTOSTERONE REPLACEMENT  
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MDL No. 2545

**SCHEDULE A**

Northern District of Indiana

HOHOLEK, ET AL. v. ABBVIE, INC., ET AL., C.A. No. 2:14-00405