

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION**

MDL No. 1203

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in the five actions listed on Schedule A move to vacate our orders that conditionally transferred their respective actions to MDL No. 1203. Defendants Pfizer Inc., Wyeth LLC, and Wyeth Pharmaceuticals Inc. oppose the motions.

Plaintiffs argue against transfer, *inter alia*, that the pretrial proceedings in MDL No. 1203 have largely concluded, that little benefit would be gained from transfer of these actions at this time, and that it would be more efficient to allow the transferor court in the Northern District of California *Mitchell* action to resolve the pending motion to remand that action to state court. We respectfully disagree for the reasons stated in our Order of February 7, 2012, in which we transferred another action to this MDL over similar objections by the plaintiff. The status of the proceedings in MDL No. 1203 do not preclude transfer. The transferee judge has been extremely successful in resolving claims in a timely fashion, and transfer likely will aid in a speedier, not slower, resolution of plaintiffs' claims. Further, the transferee judge has substantial experience ruling on the issues raised by the *Mitchell* plaintiffs' motion to remand, including fraudulent joinder of non-diverse defendants, and coordinating those issues in MDL No. 1203 likely will advance the goals of 28 U.S.C. § 1407. Plaintiffs can present their motion for remand to the transferee judge.¹ *See, e.g., In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

After considering all arguments of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 1203, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Like the already-centralized actions, these actions involve factual questions arising from allegations

¹ 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 to do so. Indeed, the transferor court has already denied motions to remand filed in the District of Delaware actions.

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of liability related to one or more of the diet drugs phentermine, fenfluramine, or dexfenfluramine. *See In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 990 F. Supp. 834 (J.P.M.L. 1998).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A are transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the Honorable Harvey Bartle III for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "John G. Heyburn II", is written above a horizontal line.

John G. Heyburn II
Chairman

Kathryn H. Vratil
Barbara S. Jones
Marjorie O. Rendell

W. Royal Furgeson, Jr.
Paul J. Barbadoro
Charles R. Breyer

**IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION**

MDL No. 1203

SCHEDULE A

Northern District of California

Janet Mitchell, et al. v. Pfizer, et al., C.A. No. 3:12-03499

District of Delaware

Lois Munchel v. Wyeth LLC, et al., C.A. No. 1:12-00906
Shirlee Granillo v. Wyeth LLC, et al., C.A. No. 1:12-00907
Christa McNutt v. Wyeth LLC, et al., C.A. No. 1:12-00908
Sara Appelbee v. Wyeth LLC, et al., C.A. No. 1:12-00909