

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: PROPECIA (FINASTERIDE) PRODUCTS
LIABILITY LITIGATION**

MDL No. 2331

ORDER DENYING TRANSFER

Before the Panel:* Defendant Merck & Co., Inc., moves under Section 1407(c) to transfer a District of New Jersey action, listed on Schedule A, to the Eastern District of New York for inclusion in MDL No. 2331. Plaintiff does not oppose the motion.

After considering the parties' arguments, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2331, but that transfer under 28 U.S.C. § 1407 will not serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. This MDL involves allegations that use of finasteride, the active ingredient in Propecia and Proscar, causes persistent sexual dysfunction in a subset of male users, sometimes even after discontinuation of use of the drug. *See In re: Propecia (Finasteride) Products Liability Litig.*, 856 F. Supp. 2d 1334, 1335 (J.P.M.L. 2012). This action appears to involve similar alleged injuries arising from the use of finasteride, though plaintiff's allegations are somewhat vague as to his precise injuries.

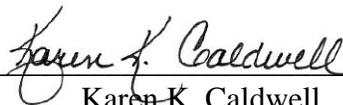
Despite this factual overlap, and based on our review of the progress of this MDL, we are of the view that the benefits of transfer to this MDL are outweighed by the effects of transferring a new action to this procedurally mature MDL, which is nearing resolution. Multidistrict litigation "is not static." *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F. Supp. 2d 1371, 1372 (J.P.M.L. 2009). The relative merits of transferring new tag-along actions to an MDL can change over time as the transferee court completes its primary tasks, and at a certain point the "benefits of transfer should not be assumed to continue." *Id.* We therefore find that transfer of *McAlexander* to MDL No. 2331 is no longer warranted. Only three procedurally advanced actions remain in this MDL, which historically has had over 1,100 cases.

If *McAlexander* progresses to a point where discovery is needed, we see no reason why (subject of course to the same conditions imposed on the parties to MDL No. 2331) the parties in *McAlexander* should not be able to avail themselves of the documents and depositions accumulated in this MDL. We further note that the court may find useful guidance in the rulings of the Honorable John Gleeson and the Honorable Brian M. Cogan's pretrial rulings in this docket. Thus, even absent transfer, most of the benefits of the MDL are available to expedite resolution of *McAlexander*.

* Judge David C. Norton took no part in the decision of this matter.

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407(c), for transfer of this action is denied.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Dale A. Kimball

Nathaniel M. Gorton
Roger T. Benitez

**IN RE: PROPECIA (FINASTERIDE) PRODUCTS
LIABILITY LITIGATION**

MDL No. 2331

SCHEDULE A

District of New Jersey

MCALEXANDER v. MERCK & CO., INC., C.A. No. 2:20-15042