

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ZOFTRAN (ONDANSETRON)
PRODUCTS LIABILITY LITIGATION

MDL No. 2657

TRANSFER ORDER

Before the Panel:* Plaintiffs and defendant Providence Health System-Oregon (Providence Health) in the action listed on Schedule A (*Brown*) move under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2657. MDL No. 2657 common defendant GlaxoSmithKline LLC opposes the motions to vacate.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2657, 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. Like many of the already-centralized actions, *Brown* involves factual questions arising from allegations that Zofran and its generic equivalent cause birth defects in children when their mothers ingest the drug while pregnant. *See In re: Zofran (Ondansetron) Prods. Liab. Litig.*, MDL No. 2657, ___ F. Supp. 3d ___, 2015 WL 6045619 at *1 (J.P.M.L. Oct. 13, 2015).

In support of the motions to vacate, movants argue that (1) the federal courts lack subject matter jurisdiction over *Brown*, and the transferor court should be allowed to rule on the pending motion to remand to state court; (2) *Brown* raises unique issues of Oregon law; and (3) transfer will be inconvenient for movants. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiff can present these arguments to the transferee judge.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). The presence of unique legal theories also is not a bar to Section 1407 transfer. *See, e.g., In re: U.S. Office of Personnel Mgmt. Data Sec. Breach Litig.*, MDL No. 2664, ___ F. Supp. 3d ___, 2015 WL 6044952, at *2 (J.P.M.L. Oct. 9, 2015). Indeed, “[t]ransferee judges routinely apply the laws of one or more jurisdictions.” *In re: Glaceau VitaminWater Mktg. & Sales Practices Litig.*, 764 F. Supp. 2d 1349, 1351 (J.P.M.L. 2011). Finally, we have held that, while transfer of a particular action might inconvenience some parties to that action, such a transfer is often necessary to further the

* Judge Charles R. Breyer took no part in the decision of this matter.

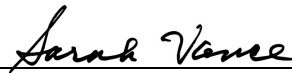
¹ Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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expeditious resolution of the litigation taken as a whole. *See, e.g., In re: Crown Life Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable F. Dennis Saylor, IV, 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

**IN RE: ZOFRAN (ONDANSETRON)
PRODUCTS LIABILITY LITIGATION**

MDL No. 2657

SCHEDULE A

District of Oregon

BROWN, ET AL. V. GLAXOSMITHKLINE, LLC, ET AL., C.A. No. 3:15-01918