

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

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

MDL No. 2657

TRANSFER ORDER

Before the Panel: Plaintiffs in the action listed on Schedule A (*Brown*) move under Panel Rule 7.1 to vacate our order that conditionally transferred the action to the District of Massachusetts for inclusion in MDL No. 2657. Defendant GlaxoSmithKline, LLC (GSK), opposes the motion to vacate.

After considering the argument of counsel, we find that *Brown* involves common questions of fact with the actions 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. No party disputes that, like many of the already-centralized actions, *Brown* involves factual questions arising out of allegations that Zofran causes birth defects in children when their mothers ingest the drug while pregnant. *See In re: Zofran (Ondansetron) Prods. Liab. Litig.*, 138 F. Supp. 3d 1381 (J.P.M.L. 2015).

In support of their motion to vacate, plaintiffs argue that federal subject matter jurisdiction over their action is lacking, and that plaintiffs' pending motion for remand to state court should be decided by the transferor court. *Brown* previously was removed, transferred to MDL No. 2657 over plaintiffs' objections, and remanded to state court. *See* Transfer Order (*Brown I*), MDL No. 2657, ECF No. 20 (J.P.M.L. Feb. 4, 2016). GSK has removed the action again, and plaintiffs argue that re-removal and transfer will cause them prejudice and delay. Specifically, they argue re-removal and transfer will prejudice their ability to appeal the Oregon state court's ruling granting the non-diverse defendant's motion for summary judgment. The Panel has held that jurisdictional issues generally do not present an impediment to transfer.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). That *Brown* has been removed more than once does not suggest a different result here. *See* Transfer Order (*Smith*), MDL No. 2323, ECF No. 643, at 1 (J.P.M.L. Apr. 7, 2016) ("While the procedural history presented here is somewhat unusual, it is not for the Panel to determine whether re-removal was appropriate after plaintiffs amended their complaint."). Plaintiffs can present their remand arguments to the transferee judge. Moreover, we have held that, while it might inconvenience some parties, transfer of a particular action often is

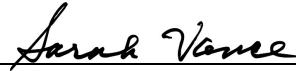
¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally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

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necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re: IntraMTA Switched Access Charges Litig.*, 67 F. Supp. 3d 1378, 1380 (J.P.M.L. 2014).

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

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

**IN RE: ZOFRAN (ONDANSETRON)
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SCHEDULE A

District of Oregon

BROWN, ET AL. v. GLAXOSMITHKLINE, LLC, ET AL., C.A. No. 3:18-02052