

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

MDL No. 2804

ORDER DENYING REMAND

Before the Panel:* Plaintiffs in the actions listed on the attached Schedule A move under Panel Rule 10.3 for Section 1407 remand to the Southern District of Texas. Defendant ICU Medical Sales, Inc., in the Southern District of Texas *Harris County* supports Section 1407 remand. Defendants¹ oppose Section 1407 remand of these actions.

After considering the argument of counsel, we deny the motions for Section 1407 remand. We ordered centralization in this docket in December 2017. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and distribution of various prescription opiate medications into states, cities, and towns across the country. *See In re Nat'l Prescription Opiate Litig.*, 290 F. Supp.3d 1375, 1378-79 (J.P.M.L. 2017). Here, the actions before the Panel have been pending in the MDL for about one (*Rockwall County* and *Ellis County*) or two years (*Harris County*). No party disputes that these actions are squarely related to the MDL proceedings, which now comprises nearly 2,900 cases.

Plaintiffs filed these Section 1407 motions, which seek return to the transferor court to obtain a ruling on their motions to remand to state court, without first obtaining a suggestion of remand from the transferee judge. Panel Rule 10.3(a) counsels that we are “reluctant to order a remand absent the suggestion of the transferee judge.” Indeed, a party moving for Section 1407 remand without such a suggestion “bears a strong burden of persuasion.” *In re: Air Crash Disaster in Ionian Sea on Sept. 8, 1974*, 438 F. Supp. 932, 934 (J.P.M.L. 1977). Plaintiffs have not met that burden here. Judge Polster, in his capacity as transferee judge, has become familiar with the issues in this litigation by presiding over extensive and highly contested pretrial proceedings. He is in the best position to determine the future course of actions in the MDL. We afford transferee judges a wide degree of discretion in their case management decisions. *See, e.g., In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977) (“The Panel has neither the statutory authority nor the inclination to review decisions of district courts, whether they are transferor or transferee courts.”). Remand of these cases without the transferee judge’s suggestion is not appropriate at this time.

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

¹ Amerisourcebergen Corp.; Cardinal Health, Inc.; and McKesson Corp.

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Despite plaintiffs' failure to carry their burden, we observe that plaintiffs are, of course, entitled to a ruling on their motion to remand. We are confident that the transferee judge will address motions to remand to state court in due course. *See, e.g., In re Zyprexa Prod. Liab. Litig.*, 594 F.3d 113, 127–28 (2d Cir. 2010) (Kaplan, J. concurring) (citations omitted).

IT IS THEREFORE ORDERED that the plaintiffs' motions for Section 1407 remand of the actions listed on Schedule A are denied.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell

Chair

R. David Proctor
Nathaniel M. Gorton
David C. Norton

Catherine D. Perry
Matthew F. Kennelly

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

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SCHEDULE A

Northern District of Ohio

COUNTY OF HARRIS v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-45677
(S.D. Texas, C.A. No. 4:18-00490)

ROCKWALL COUNTY v. CVS HEALTH CORPORATION, C.A. No. 1:19-45859
(S.D. Texas, C.A. No. 4:19-02181)

ELLIS COUNTY v. WALGREENS BOOTS ALLIANCE, INC., ET AL.,
C.A. No. 1:19-45860 (S.D. Texas, C.A. No. 4:19-02256)