

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: ELMIRON (PENTOSAN POLYSULFATE
SODIUM) PRODUCTS LIABILITY LITIGATION**

MDL No. 2973

TRANSFER ORDER

Before the Panel:* Plaintiffs in the Southern District of California action (*Morrison*) listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring their action to MDL No. 2973. Defendants¹ oppose the motion.

After considering the arguments of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2973, 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. Moreover, transfer is warranted for the reasons set forth in our order directing centralization. In that order, we held that the District of New Jersey was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations concerning the propensity of the drug Elmiron (which is used to treat interstitial cystitis, a chronic bladder condition where individuals experience a range of symptoms from discomfort to debilitating pain) to cause retinal injuries, notably atypical or pigmentary maculopathy. *See In re Elmiron (Pentosan Polysulfate Sodium) Prods. Liab. Litig.*, 513 F.Supp.3d 1406 (J.P.M.L. 2020). *Morrison* falls within the MDL’s ambit because it involves injuries arising from retinal injuries arising from the use of Elmiron, as well as allegations that defendants failed to warn of the risk of such injuries.

Plaintiffs move to vacate the conditional transfer order by arguing principally that federal jurisdiction is lacking over their case.² We are not persuaded by this argument. Such jurisdictional

* Judge Madeline Cox Arleo took no part in the decision of this matter.

¹ Alza Corporation; Jansen Ortho LLC; Jansen Pharmaceuticals, Inc.; Janssen Research & Development LLC; Johnson & Johnson; Ortho-McNeil Pharmaceutical, Inc.; Teva Branded Pharmaceutical Products R&D, Inc.; and Teva Pharmaceuticals USA, Inc.


² Plaintiffs argue at length that their motion to remand their actions to state court is likely to be granted. However, “Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.” *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).

objections generally do not present an impediment to transfer and can be presented to the transferee judge.³ See, e.g., *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”).

Plaintiffs also argue that their putative class claims under California law and claims against defendant Dr. Parsons are sufficiently unique to warrant exclusion from the MDL. We do not view these arguments as persuasive. Several putative classes are alleged in the over 1,700 Elmiron cases filed to date, and efficiencies can be achieved by adding the putative California class in *Morrison* to their number. Plaintiffs here contend that one defendant, Dr. Parsons (who, in *Morrison*, also was one of the plaintiffs’ treating physicians), played a crucial role in the clinical studies that led to the regulatory approval of Elmiron. Defendants respond that similar allegations concerning Dr. Parsons appear in most MDL complaints, so he appears likely to be the subject of MDL discovery and motion practice. In our view, transfer will help streamline such discovery. The transferee judge can, of course, structure pretrial proceedings to accommodate any unique challenges that the *Morrison* action presents.

IT IS THEREFORE ORDERED that this action is transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Brian R. Martinotti for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell

Chair

Nathaniel M. Gorton

David C. Norton

Dale A. Kimball

Matthew F. Kennelly

Roger T. Benitez

³ 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.

**IN RE: ELMIRON (PENTOSAN POLYSULFATE
SODIUM) PRODUCTS LIABILITY LITIGATION**

MDL No. 2973

SCHEDULE A

Southern District of California

MORRISON, ET AL. V. TEVA BRANDED PHARMACEUTICAL PRODUCTS R&D, INC.,
ET AL., C.A. NO. 3:22-01074