

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: MCKINSEY & COMPANY, INC., NATIONAL  
PRESCRIPTION OPIATE CONSULTANT LITIGATION**

MDL No. 2996

**ORDER VACATING CONDITIONAL TRANSFER ORDER**

**Before the Panel:** Plaintiffs, manufacturing and distributor defendants,<sup>1</sup> and defendant West Virginia Board of Pharmacy in fifteen Southern District of West Virginia actions brought on behalf of children diagnosed with neonatal abstinence syndrome (NAS) move under Panel Rule 7.1 to vacate the order conditionally transferring the actions, which are listed on Schedule A, to MDL No. 2996. McKinsey defendants<sup>2</sup> do not oppose the motions.

After considering the arguments of counsel, we grant the motions to vacate. No party disputes that plaintiffs make factual allegations against McKinsey that bring the actions within the MDL’s ambit. In these cases, though, the claims against McKinsey represent only one aspect of a much larger dispute with multiple claims brought against over 20 defendants, which include manufacturers and distributors of opioids and the West Virginia Board of Pharmacy. No party here—including common MDL No. 2996 defendant McKinsey—affirmatively supports inclusion of these cases in the MDL. Transfer thus appears unnecessary. *See, e.g., In re “Lite Beer” Trademark Litig.*, 437 F. Supp. 754, 755-56 (J.P.M.L. 1977) (denying centralization, in part, based on the “nearly unanimous opposition of the parties to transfer, coupled with the absence of any party’s affirmative support for transfer”).

The issues presented here are somewhat different from when we transferred four NAS cases brought against some MDL No. 2804 defendants (*i.e.*, WVBOP, Johnson & Johnson and allegedly affiliated companies Janssen and Noramco) and McKinsey to the McKinsey MDL in December 2021. *See In re: Nat’l Prescription Opiate Litig.*, 576 F. Supp. 3d 1378 (Dec. 10, 2021). There, we determined that separation and remand of the claims and transfer to each of the two MDLs was impracticable because certain claims were brought against all defendants, *id.* at 1380,

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<sup>1</sup> AbbVie Inc., Allergan Finance LLC, Allergan PLC, Allergan Sales LLC, Allergan USA, Inc., AmerisourceBergen Corporation, AmerisourceBergen Drug Corporation, Anda, Inc., Cardinal Health, Inc., H.D. Smith Holding Comp, H.D. Smith Holdings, LLC, H.D. Smith, LLC, Janssen Pharmaceuticals, Inc., Johnson & Johnson, McKesson Corporation, Noramco, and Teva Pharmaceuticals USA, Inc.

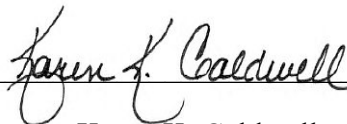
<sup>2</sup> McKinsey & Company, Inc., McKinsey & Company, Inc. United States, and McKinsey & Company, Inc. Washington D.C.

and because splitting transfer would complicate resolution of pending remand motions, *id.* at 1381. We acknowledged that, if remand was denied, the transferee judge “may deem it appropriate to order the parties to consider other ways that they can more clearly delineate McKinsey-related issues from issues involving MDL No. 2804 defendants. Possible solutions include severance or repleading claims in a way that is more amenable to Section 1407 remand of the non-McKinsey claims for retransfer to MDL No. 2804.” *Id.* at 1381. The cases now before the Panel are brought against several distributors and other manufacturers that, unlike the defendants in the four cases at issue in December 2021, do not have any alleged relationship with McKinsey.

We are aware that vacating the conditional transfer order here creates some risk of inconsistent pretrial rulings. In our view, this possibility does not outweigh the inconvenience to the parties at this moment. If needed, the parties and involved judges can coordinate to avoid any potentially conflicting pretrial obligations placed upon the parties. Moreover, if the parties or the involved courts become concerned that transfer is needed to address any unavoidable potential inconsistencies, then the parties or the courts can re-notice the actions for transfer by the Panel at that time.

IT IS THEREFORE ORDERED that the Panel’s conditional transfer order designated “CTO-35” is vacated with respect to these actions.

PANEL ON MULTIDISTRICT LITIGATION



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Karen K. Caldwell  
Chair

Nathaniel M. Gorton  
David C. Norton  
Dale A. Kimball

Matthew F. Kennelly  
Roger T. Benitez  
Madeline Cox Arleo

**IN RE: MCKINSEY & COMPANY, INC., NATIONAL  
PRESCRIPTION OPIATE CONSULTANT LITIGATION**

MDL No. 2996

**SCHEDULE A**

Southern District of West Virginia

S. U., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00471  
J. A. H., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00472  
L. M. H., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00473  
A. L. K., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00474  
S.W., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00475  
K.A.D., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00476  
D.R.E., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00478  
K. B., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00479  
A.B.F., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00480  
M. B., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00481  
A.S.A., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00482  
M. B., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00483  
M. E. B., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00484  
M. B., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00485  
A. S. A., ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 2:22-00487