

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

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

MDL No. 2996

TRANSFER ORDER

Before the Panel: Plaintiff in an Eastern District of Oklahoma action (*Cherokee Nation*) moves under Panel Rule 7.1 to vacate the order conditionally transferring the action, which is listed on Schedule A, to MDL No. 2996. McKinsey defendants¹ oppose the motion.

After considering the arguments of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2996, 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 Northern District of California was an appropriate Section 1407 forum for actions sharing factual questions regarding McKinsey's role in providing advice to certain opioid manufacturers, most notably Purdue, and others in the form of sales and marketing strategies aimed at increasing sales of prescription opioid drugs. *See In re McKinsey & Co., Inc., Nat'l Prescription Opiate Consultant Litig.*, 2021 WL 2351628 at *1 (J.P.M.L. June 7, 2021). The action now before us shares a factual core with the MDL actions: plaintiff alleges that McKinsey's consulting work with major opioid manufacturers, distributors and retailers fueled the wrongful diversion of opioids, causing harm to its citizens and forcing it to expend unnecessary healthcare and social service costs. Plaintiff does not dispute that this action thus falls within the MDL's ambit.

Plaintiff moves to vacate the conditional transfer order, primarily by arguing that federal jurisdiction is lacking over its case. We are not persuaded by this argument. The Panel has held that such jurisdictional objections generally do not present an impediment to transfer.² *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.”). Plaintiff

¹ McKinsey & Company, Inc., McKinsey & Company, Inc. United States, and McKinsey & Company, Inc. Washington D.C.

² 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.

also argues that including *Cherokee Nation* in this MDL will delay its progress. Given the undisputed factual overlap with the MDL proceedings, transfer is justified to facilitate the efficient conduct of the litigation as a whole. See *In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”). Moreover, plaintiff’s assertion that its motion to remand is likely to linger in the transferee court is speculative, as the MDL proceedings are only just beginning.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Charles R. Breyer for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez

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

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

MDL No. 2996

SCHEDULE A

Eastern District of Oklahoma

THE CHEROKEE NATION v. MCKINSEY AND COMPANY, INC.,
C.A. No. 6:21-00200