

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ABBOTT LABORATORIES, ET AL.,
PRETERM INFANT NUTRITION PRODUCTS
LIABILITY LITIGATION**

MDL No. 3026

TRANSFER ORDER

Before the Panel:* Plaintiffs in the District of District of Columbia action (*George*) 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. 3026. Defendant Children's National Medical Center opposes 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. 3026, 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 Illinois was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that cow's milk-based infant formula products marketed under the Similac (Abbott) and Enfamil (Mead Johnson) brand names have a higher propensity to cause necrotizing enterocolitis (NEC) in infants born prematurely than other, allegedly safer alternatives. *See In re Abbott Laboratories, et al., Preterm Infant Nutrition Prods. Liab. Litig.*, ___ F. Supp. 3d ___, 2022 WL 1053663 (J.P.M.L., Apr. 8, 2022). *George* falls within the MDL's ambit because it involves injuries arising from an infant's ingestion of cow's milk-based preterm infant formulas manufactured by Abbott Laboratories and/or Mead Johnson.

Transfer of the *George* action is a somewhat close call because the action is brought solely against the hospital, Children's National Medical Center, where plaintiffs' infant was administered cow's milk-based human milk fortifier. While dozens of MDL actions bring claims against local hospital defendants and manufacturer defendants, it appears that no action in the MDL contains claims solely against a hospital. Plaintiffs in *George* have a companion case in the MDL against Abbott that was transferred in our initial transfer order. *See George v. Abbott Laboratories, Inc.*, N.D. Illinois, C.A. No. 22-01996. In opposing transfer, plaintiffs argue that the case now before us is solely a medical negligence case, and they stress that the transferor judge declined to

* Judges Nathaniel M. Gorton, David C. Norton, and Roger T. Benitez took no part in the decision of this matter.

consolidate the cases. We are not persuaded by these arguments. The *George* action now before us against Children’s National Medical Center and the *George* action against Abbott in the MDL arise from a common theory – that Abbott’s cow’s milk-based human milk fortifier caused the infant to develop NEC. Common to both cases will be questions of causation and the adequacy of warnings given by Abbott to physicians. Transfer under Section 1407 “does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer.” *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 543 F. Supp. 2d 1376, 1378 (J.P.M.L. 2008). Placing both actions regarding the death of the same infant before a single judge ensures consistent rulings in dispositive and *Daubert* motions. If the transferee judge ultimately determines that the claims against defendant Children’s National Medical Center can proceed independently of the MDL or be tried in advance of the claims against Abbott, then *George* can be remanded to the transferor court with a minimum of delay.

IT IS THEREFORE ORDERED that this action is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable Rebecca R. Pallmeyer for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell

Chair

Matthew F. Kennelly
Madeline Cox Arleo

Dale A. Kimball

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SCHEDULE A

District of District of Columbia

GEORGE, ET AL. V. CHILDREN'S NATIONAL MEDICAL CENTER, C.A. No. 1:20-03108