

FILED

JUN 25 2014

**ATLANTIC COUNTY
LAW DIVISION**

PREPARED BY THE COURT

Shelly Rahman, et al,
Plaintiffs,
v.
Daiichi Sankyo, Inc., et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-504-14

Motion to Change Venue
Motion for Consolidation

George Williams, et al.
Plaintiffs,
v.
Daiichi Sankyo, Inc., et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-506-14

Motion to Change Venue
Motion for Consolidation

Kittie Knight,
Plaintiffs,
v.
Daiichi Sankyo, Inc., et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-768-14

Motion to Change Venue
Motion for Consolidation

Iolene Wallace, et al,
Plaintiffs,
v.
Daiichi Sankyo, Inc., et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-769-14

Motion to Change Venue
Motion for Consolidation

David Douglass, et al.
Plaintiffs,
v.
Daiichi Sankyo, Inc., et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-616-14

Motion to Change Venue

<p>Steven G. Hendelman, Plaintiffs, v. Daiichi Sankyo, Inc., et al, Defendants.</p>	<p>Motion for Consolidation SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-961-14</p>
<p>Joanne Henderson, Plaintiffs, v. Daiichi Sankyo, Inc., et al, Defendants.</p>	<p>Motion to Change Venue Motion for Consolidation SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-1165-14</p>
<p>Patricia Slayton, Plaintiffs, v. Daiichi Sankyo, Inc., et al, Defendants.</p>	<p>Motion to Change Venue Motion for Consolidation SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-962-14</p>
<p>Harriet Rubin, et al, Plaintiffs, v. Daiichi Sankyo, Inc., et al, Defendants.</p>	<p>Motion to Change Venue Motion for Consolidation SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-946-14</p>
<p>Christy Brooks, Plaintiffs, v. Daiichi Sankyo, Inc., et al, Defendants.</p>	<p>Motion to Change Venue Motion for Consolidation SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-2413-14</p>

Arthur Schweithelm, et al.,

Plaintiffs,

v.

Daiichi Sankyo, Inc., et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-1777-14

Motion to Change Venue
Motion for Consolidation

THIS MATTER is presented to the Court, the Honorable Julio L. Mendez, upon application of DEFENDANT Daiichi Sankyo for transfer of venue and upon application for consolidation by counsel for DEFENDANTS above, and upon proper notice to all parties in all of the aforementioned cases.

FACTS

All eleven (11) of the aforementioned cases are products liability cases filed in Atlantic County in which the plaintiffs allege wrongful acts related to regulatory approval and compliance, marketing, distribution or sale of Benicar. Six (6) of the Plaintiffs are represented by the firm LopezMcHugh and the other five (5) Plaintiffs are represented by the Rheingold, Valet firm, who have both filed motions to consolidate their eleven (11) cases.

Defendant Daiichi Sankyo has filed a motion to transfer venue to Middlesex or Morris County. At the time this motion was filed, there were only ten (10) Plaintiffs and all ten (10) were out-of-state residents with no connection to New Jersey or Atlantic County. The basis for Daiichi Sankyo's motion was that Plaintiffs are not residents of New Jersey, nor do they allege any connection to New Jersey or Atlantic County. The

sole basis for venue in Atlantic County was that Daiichi Sankyo conducted business in the county by making its product available in the county.

Furthermore, Defendant Daiichi Sankyo argued that Plaintiffs purchased the medication at issue in their respective states and that Daiichi Sankyo, Inc. and Daiichi Sankyo US Holdings has their principal place of business in Middlesex (an office in Edison) and Morris County (an office in Parsippany). Daiichi Sankyo argued that all alleged wrongful acts would have occurred in Middlesex and Morris County and that all key documents and witnesses are located in Middlesex and Morris Counties. Defendant also argue that the deference that is typically provided to the Plaintiff's choice of venue is not applicable in this case, because Plaintiffs are not New Jersey citizens. See Kurzke v. Nissan Motor Corp., 164 N.J. 159, 171 (2000) (forum non conveniens case).

At the conclusion of oral argument, the court provided counsel with a fifteen (15) day period to allow counsel to negotiate an agreeable venue. During this period, LopezMcHugh filed another complaint for a new Plaintiff alleging the same harm. The Plaintiff in this case is Christy Brooks, who is a resident of Atlantic City, New Jersey, in Atlantic County. Nonetheless, Defendant Daiichi Sankyo continues to object to venue being laid in Atlantic County because "the fact that Plaintiffs' counsel used the time between oral argument and the June 6 deadline to hunt down a potential plaintiff from Atlantic County should not have bearing on this court's consideration of Defendant's motion to transfer venue....the Atlantic County court docket is already inundated with cases."

DISCUSSION

I. Defendant's Motion to Transfer Venue is denied, without prejudice.

R. 4:3-3 (a)(1) provides that the Assignment Judge or a designee may order a change of venue "if the venue is not laid in accordance with R. 4:3-2." R. 4:3-2(a)(3) provides that venue "shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement." R. 4:3-2(b) states that Corporate Parties, for the purposes of this rule, reside in the county in which its registered office is located or in any county in which it is actually doing business.

R. 4:3-3(a) reads, in pertinent part, that a change of venue may be ordered (1) if the venue was not laid in accordance with R. 4:3-2; or (2) if there is a substantial doubt that a fair and impartial trial can be had in the county where the venue is laid; or (3) for the convenience of the parties and witnesses in the interest of justice, or (4) in Family Part post-judgment motions, if both parties reside outside the county of original venue and application is made to the court by either party to change venue to a county where one of the parties now resides. If a motion to change venue is filed, the movant has the burden of demonstrating good cause for the change. Comment to R. 4:3-3.

The court hereby finds that Defendants have not met their burden of proving that the court should transfer venue to Middlesex or Morris County under R. 4:3-3(a)(3), "for the convenience of the parties and witnesses in the interest of justice." The Plaintiff's choice of venue is generally proper where one of the parties in the litigation resides. In this case, there is now a Plaintiff that resides in Atlantic City, within Atlantic County. For that reason, any alleged inconvenience or interests of justice are not outweighed by the

Plaintiff's proper choice of venue. All of the alleged inconveniences are not sufficient to override the Plaintiff's interest in choosing a proper venue, which is presumed to be the proper venue because of Plaintiff Brooks' residence in Atlantic County. At least for Christy Brooks, the cause of action occurred in Atlantic County, some of the evidence will be in Atlantic County, and her residence is in Atlantic County.

In this case, Defendant has the burden of demonstrating good cause. Comment to R. 4:3-3. Initially, the court was inclined to grant Defendant's motion, on the basis that all of the Plaintiffs were out-of-state residents and had no connection themselves to Atlantic County and because Daiichi Sankyo has connections to Morris and Middlesex Counties. However, the initiation of the Brooks case altered the dynamics of this case in that, now, the only in-state Plaintiff in this case is from Atlantic County. Ms. Brooks' decision to file suit in her county of residence is given a presumption of appropriateness which, in the court's view, Daiichi Sankyo has not rebutted.

This is not to say that this court will deny all transfer motions in cases where one of many Plaintiffs in a products liability case is from Atlantic County. Rather, the court has denied Defendant's transfer motion because the only in-state Plaintiff in this case happens to be an Atlantic County resident. All remaining Plaintiffs are out-of-state. If, for instance, the court is presented with a case in which one plaintiff resides in Atlantic County, one Plaintiff resides in Morris and another in Middlesex, the outcome may be different. Or, in another example, if the court is presented with a situation in which all Plaintiffs are out-of-state residents, the result may be different.

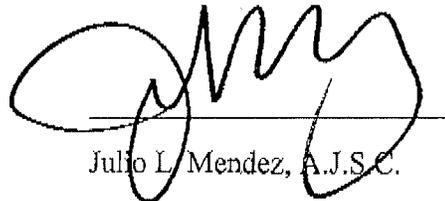
II. Plaintiffs' Motion to Consolidate is granted for pre-trial management purposes.

Pursuant to R. 4:38-1, Plaintiffs have filed a motion to consolidate all of the aforementioned cases. The Rule reads as follows: "When actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the court on a party's or its own motion may order the actions consolidated."

Defendant argues that consolidation is inappropriate in that Plaintiffs' only remedy is to seek multi-county litigation status, which is the result of the New Jersey Supreme Court's administrative orders pursuant to a formalized process consistent with R. 4:38A, evaluating over 15 different criteria. In the alternative, Defendant argues that the matters may be managed together, but not tried together. Plaintiff argues that consolidation is common in products liability cases and that consolidation will avoid these cases being split among various judges, leading to inconsistent rulings and results. Plaintiffs also argue that, if consolidated, the judge assigned to manage these cases may decide, after discovery, whether or not to try these cases together or sever them.

The court finds Plaintiffs' arguments regarding consolidation persuasive. At this point, the court is of the opinion that these matters should be consolidated for pre-trial management purposes to avoid inconsistency and inefficiency. At a later time, the trial judge may decide whether or not trying these cases together is appropriate. This ruling will not prejudice the Defendant in any way, as Daiichi Sankyo may request that these matters be tried separately at a later date.

Date: 6/25/14


Julio L. Mendez, A.J.S.C.