

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION**

MDL No. 2606

TRANSFER ORDER

Before the Panel:^{*} Plaintiffs in the Eastern District of Missouri action (*Moore*) listed on the attached Schedule A move under Panel Rule 7.1 to vacate our order conditionally transferring the action to the District of New Jersey for inclusion in MDL No. 2606. Responding defendants oppose the motion.¹

In support of their motion to vacate, the *Moore* plaintiffs principally argue that their action was improperly removed, and a motion for remand to state court is pending. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present their arguments regarding those issues to the transferee judge.² *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

After considering the argument of counsel, we find that the *Moore* action involves common questions of fact with actions previously transferred to MDL No. 2606, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions in the MDL “share factual issues arising from allegations that taking Benicar, Benicar HCT, or Azor may cause serious gastrointestinal injury.” *In re: Benicar (Olmesartan) Prods. Liab. Litig.*, 96 F. Supp. 3d 1381, 1382 (J.P.M.L. 2015). The *Moore* plaintiffs do not dispute that their action implicates those same issues.

^{*} Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

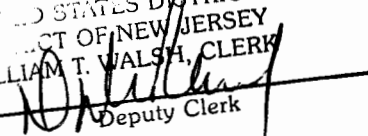
¹ Responding defendants are Daiichi Sankyo, Inc., Daiichi Sankyo U.S. Holdings, Inc., Forest Laboratories, Inc., Forest Pharmaceuticals, Inc., and Forest Research Institute, Inc.

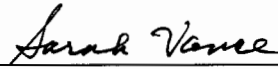
² Moreover, under *Panel Rule 2.1(d)*, the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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IT IS THEREFORE ORDERED that the *Moore* action is transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Robert B. Kugler for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK
By  Deputy Clerk



Sarah S. Vance
Chair

Charles R. Breyer
R. David Proctor

Ellen Segal Huvelle
Catherine D. Perry

**IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION**

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SCHEDULE A

Eastern District of Missouri

MOORE, ET AL. v. DAIICHI SANKYO, INC., ET AL., C.A. No. 4:15-01156