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OCT 27 2003

ATTEST  
BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION



01-MD-01407-ORD

DOCKET NO. 1407

DEPUTY

JUDICIAL PANEL ON  
DISTRICT LITIGATION

OCT 27 2003

FILED  
CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE PHENYLPROPANOLAMINE (PPA) PRODUCTS LIABILITY LITIGATION**

*Royal Lewis, et al. v. Bayer Corp., et al.*, N.D. Mississippi, C.A. No. 2:03-172  
*Verna Dunlap, et al. v. Bayer Corp., et al.*, N.D. Mississippi, C.A. No. 4:03-207  
*Nathan Frank Townsend, et al. v. Wyeth, et al.*, S.D. Mississippi, C.A. No. 2:03-193  
*Louise Overstreet, etc. v. Bayer Corp., et al.*, S.D. Mississippi, C.A. No. 2:03-268  
*Robin Elizabeth Shivers, et al. v. Rhoades & Robby Drugs, Inc., et al.*, S.D. Mississippi, C.A. No. 3:03-272  
*Maria Claiborne, et al. v. GlaxoSmithKline Consumer Healthcare, L.P., et al.*, S.D. Mississippi, C.A. No. 3:03-444  
*James D. Thigpen, et al. v. Bayer Corp., et al.*, S.D. Mississippi, C.A. No. 4:03-153  
*James Chasey v. Bayer Corp., et al.*, S.D. Mississippi, C.A. No. 5:03-174  
*Deedward Lacy, et al. v. Wyeth, et al.*, S.D. Mississippi, C.A. No. 5:03-187  
*James E. Anderson, et al. v. Bayer Corp., et al.*, S.D. Mississippi, C.A. No. 5:03-188  
*Augusta McClure v. Wyeth Consumer Healthcare, et al.*, S.D. Mississippi, C.A. No. 5:03-197

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, BRUCE M. SELYA,\* JULIA SMITH GIBBONS, D. LOWELL JENSEN,\* J. FREDERICK MOTZ\* AND ROBERT L. MILLER, JR., JUDGES OF THE PANEL**

**TRANSFER ORDER**

Before the Panel are motions brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in eleven Northern and Southern District of Mississippi actions. Plaintiffs seek to vacate Panel orders conditionally transferring their respective action to the Western District of Washington for inclusion in the centralized pretrial proceedings occurring there in this docket before Judge Barbara Jacobs Rothstein. Various defendants in the actions have responded in support of transfer of their respective action(s).

On the basis of the papers filed and hearing session held, the Panel finds that these eleven actions involve common questions of fact with actions in this litigation previously transferred to the Western District of Washington, and that transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the

\*Judge Selya participated in the decision of this matter only with respect to the Northern District of Mississippi *Lewis* action. Judges Jensen and Motz took no part in the decision of this matter with respect to the Southern District of Mississippi *Anderson* action. Additionally, Judge Jensen took no part in the disposition of the Northern District of Mississippi *Dunlap* action, and Judge Motz took no part in the disposition of the Southern District of Mississippi *Townsend* action.

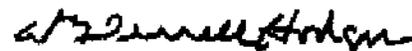
parties and witnesses and promote the just and efficient conduct of the litigation. The Panel is persuaded that transfer of the actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. The Panel held that the Western District of Washington was a proper Section 1407 forum for actions brought by persons allegedly injured by products containing Phenylpropanolamine (PPA) – a substance which, until it recently became the subject of a public health advisory issued by the Food and Drug Administration, was used as an ingredient in many nasal decongestants and weight control products. *See In re Phenylpropanolamine (PPA) Products Liability Litigation*, 173 F.Supp.2d 1377 (J.P.M.L. 2001).

Certain of the plaintiffs premise much of their opposition to transfer on their argument that federal jurisdiction is lacking in their actions. They urge the Panel not to order transfer before motions to remand to state court are resolved by the appropriate transferor court. We note that remand and other motions, if not resolved in transferor courts by the time of Section 1407 transfer, can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiffs also object to transfer on the ground that transfer would be inconvenient. We point out that transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. We observe that since Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. *See, e.g., Fed.R.Civ.P. 45(c)*. Furthermore, the judicious use of liaison counsel, lead counsel and committees of counsel will eliminate the need for most counsel ever to travel to the transferee district. *See Manual for Complex Litigation, Third, § 20.22 (1995)*. And it is most logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of inconvenience to all concerned. *See In re Nissan Motor Corporation Antitrust Litigation*, 385 F.Supp. 1253, 1255 (J.P.M.L. 1974).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these eleven actions are transferred to the Western District of Washington and, with the consent of that court, assigned to the Honorable Barbara Jacobs Rothstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



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Wm. Terrell Hodges  
Chairman