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DOCKET NO. 1657

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE VIOXX PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

TRANSFER ORDER

This litigation presently consists of 148 actions pending in 41 federal districts and listed on the attached Schedule A. Before the Panel are two motions, pursuant to 28 U.S.C. § 1407, that taken together seek centralization for coordinated or consolidated pretrial proceedings of all but one of these actions.¹ Plaintiff in one Eastern Louisiana action seeks centralization of this litigation in the Eastern or Western Districts of Louisiana. Defendant Merck & Co., Inc. (Merck) moves for centralization of this litigation in either the District of Maryland, the Southern District of Indiana, or the Northern District of Illinois. Merck also agrees with some plaintiffs that the District of New Jersey would be an appropriate transferee district. AmerisourceBergen Corp., a wholesaler defendant, supports centralization in the Maryland district. Most responding plaintiffs agree that centralization is appropriate, although some plaintiffs suggest alternative transferee districts, including the Northern District of Alabama, the Central or Northern Districts of California, the District of Delaware, the Southern District of Illinois, the District of Minnesota, the Eastern District of Missouri, the District of New Jersey, the Eastern or Southern Districts of New York, the Northern or Southern Districts of Ohio, the Western District of Oklahoma, the Eastern District of Pennsylvania, and the Southern or Western Districts of Texas.

* Judge Motz took no part in the decision of this matter.

¹Included in the Section 1407 motions were eleven additional actions pending in the Central District of California (2), the Southern District of California (1), the Southern District of Illinois (2), the Southern District of Indiana (1), the Western District of Missouri (1), the Southern District of New York (1), the Northern District of Texas (1), and the Southern District of Texas (2). These actions have been either remanded to their respective state courts, voluntarily dismissed, or otherwise closed. Accordingly, inclusion of the actions in Section 1407 proceedings is moot.

One other action – *Teamsters Local 237 Welfare Fund, et al. v. Merck & Co., Inc.*, S.D. New York, C.A. No. 1:04-9248 – was not included on either MDL-1657 motion and is now included in this transfer order. All parties to this action had notice of the proceedings before the Panel relating to Section 1407 centralization and had an opportunity to participate in those proceedings by stating their respective positions in writing and during the Panel's hearing session.

The Panel has been notified of nearly 300 potentially related actions pending in multiple federal districts. In light of the Panel's disposition of this docket, these actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

The three arguments in opposition to Section 1407 centralization can be summarized as follows: plaintiffs in two actions oppose inclusion of their actions in MDL-1657 proceedings, because motions to remand their actions to state court are pending; plaintiffs in some Southern Texas actions along with plaintiffs in one third-party payor action pending in the Southern District of New York oppose these actions' inclusion in MDL-1657, arguing that individual questions of fact in their actions predominate over any common questions of fact and/or that discovery is already underway in these actions; and plaintiffs in one action pending in the Eastern District of New York oppose inclusion of their action in 1407 proceedings, since it involves additional claims relating to a different prescription medication not involved in other MDL-1657 actions.

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions focus on alleged increased health risks (including heart attack and/or stroke) when taking Vioxx, an anti-inflammatory drug, and whether Merck knew of these increased risks and failed to disclose them to the medical community and consumers. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

The pendency of a motion to remand to state court is not a sufficient basis to avoid inclusion in Section 1407 proceedings. We note that motions to remand in two actions, one action each in the District of Kansas and the Eastern District of Missouri, as well as in any other MDL-1657 actions can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

Nor are we persuaded by the arguments of some opposing Texas plaintiffs and the New York third-party payor plaintiffs. 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 note that the MDL-1657 transferee court can employ any number of pretrial techniques – such as establishing separate discovery and/or motion tracks – to efficiently manage this litigation. In any event, we leave the extent and manner of coordination or consolidation of these actions to the discretion of the transferee court. *In re Mutual Funds Investment Litigation*, 310 F.Supp.2d 1359 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. But we are unwilling, on the basis of the record before us, to make such a determination at this time. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6*, 199 F.R.D. at 436-38. We are confident in the transferee judge's ability to streamline pretrial proceedings in these actions, while concomitantly directing the appropriate resolution of all claims.

The Panel is persuaded, however, that claims involving a prescription drug other than Vioxx in one Eastern District of New York action do not share sufficient questions of fact with claims relating to Vioxx to warrant inclusion of these non-Vioxx claims in MDL-1657 proceedings.

Given the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide docket. Thus we have searched for a transferee judge with the time and experience to steer this complex litigation on a prudent course. By centralizing this litigation in the Eastern District of Louisiana before Judge Eldon E. Fallon, we are assigning this litigation to a jurist experienced in complex multidistrict products liability litigation and sitting in a district with the capacity to handle this litigation.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on the attached Schedule A and pending outside the Eastern District of Louisiana are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

IT IS FURTHER ORDERED that claims in *Dominick Cain, et al. v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:01-3441, against Pharmacia Corp., Pfizer Inc., and G.D. Searle & Co. relating to a prescription medication other than Vioxx are simultaneously separated and remanded to the Eastern District of New York.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1657 -- In re Vioxx Products Liability Litigation

Middle District of Alabama

Paul Turner, Sr. v. Merck & Co., Inc., C.A. No. 1:04-999
Danny M. Wilson v. Merck & Co., Inc., C.A. No. 2:03-844

Northern District of Alabama

Carolyn O. Hensley, etc. v. Merck & Co., Inc., C.A. No. 1:03-906
William Cook v. Merck & Co., Inc., et al., C.A. No. 2:02-2710
Sharon Scott Jones v. Merck & Co., Inc., C.A. No. 5:04-3079

Southern District of Alabama

Carolyn Younge, etc. v. Merck & Co., Inc., et al., C.A. No. 1:03-125

Eastern District of Arkansas

Linda Sue Otts v. Merck & Co., Inc., C.A. No. 5:04-57

Western District of Arkansas

Bobby Brown, et al. v. Merck & Co., et al., C.A. No. 4:04-4140
Arthur Fulton, etc. v. Merck & Co., Inc., C.A. No. 6:03-6107

Central District of California

Charles Ashman v. Merck & Co., Inc., C.A. No. 2:04-8225
Janet Briggs v. Merck & Co., Inc., C.A. No. 2:04-9275

Northern District of California

Kathy Tokes v. Merck & Co., Inc., C.A. No. 3:04-4435
Patricia A. Taylor v. Merck & Co., Inc., C.A. No. 3:04-4510
Jeffrey Brass v. Merck & Co., Inc., C.A. No. 3:04-4521

Middle District of Florida

Frances Dunleavy, et al. v. Merck & Co., Inc., C.A. No. 2:04-539

MDL-1657 Schedule A (Continued)

Northern District of Florida

Benjamin Burt, et al. v. Merck & Co., Inc., C.A. No. 3:04-388

Southern District of Florida

Ellen B. Gerber, et al. v. Merck & Co., Inc., C.A. No. 0:04-61429
Josefa Abraham, et al. v. Merck & Co., Inc., C.A. No. 1:04-22631
Sidney Schneider v. Merck & Co., Inc., et al., C.A. No. 1:04-22632
Clara Fontanilles v. Merck & Co., Inc., C.A. No. 1:04-22799
Stanley Silber, et al. v. Merck & Co., Inc., C.A. No. 9:04-80983

Northern District of Georgia

Richard Zellmer v. Merck & Co., Inc., et al., C.A. No. 1:03-2530
Edna Strickland v. Merck & Co., Inc., C.A. No. 1:04-3231

Northern District of Illinois

Linda Grant, et al. v. Merck & Co., Inc., C.A. No. 1:04-6407
Constance Oswald v. Merck & Co., Inc., C.A. No. 1:04-6741
Anita Ivory v. Merck & Co., Inc., C.A. No. 1:04-7218

Southern District of Illinois

Roberta Walson, etc. v. Merck & Co., Inc., C.A. No. 3:04-27
John Ellis v. Merck & Co., Inc., et al., C.A. No. 3:04-792
Bilbrey v. Merck & Co., Inc., C.A. No. 3:04-836

Southern District of Indiana

Estate of Lowell D. Morrison v. Merck & Co., Inc., C.A. No. 1:03-1535
Kimberly Van Jelgerhuis, et al. v. Merck & Co., Inc., C.A. No. 1:04-1651

District of Kansas

Vicky Hunter v. Merck & Co., Inc., C.A. No. 2:04-2518
Betty S. Smith v. Merck & Co., Inc., C.A. No. 6:04-1355

MDL-1657 Schedule A (Continued)

Eastern District of Kentucky

Daniel K. Williams v. Merck & Co., Inc., C.A. No. 2:04-235
Richard J. Getty, et al. v. Merck & Co., Inc., C.A. No. 5:04-452

Eastern District of Louisiana

Salvadore Christina, Sr. v. Merck & Co., Inc., C.A. No. 2:04-2726
Angelis Alexander v. Merck & Co., Inc., C.A. No. 2:04-2845
Leonce Davis v. Merck & Co., Inc., C.A. No. 2:04-2937
Mary V. Gagola v. Merck & Co., Inc., C.A. No. 2:04-3053
Christine L. Parr v. Merck & Co., Inc., C.A. No. 2:04-3054
Clifton Adam Savage, Sr. v. Merck & Co., Inc., C.A. No. 2:04-3055
Delores Thomas Robertson v. Merck & Co., Inc., C.A. No. 2:04-3056
Howard Mark Falick v. Merck & Co., Inc., C.A. No. 2:04-3060
Warren L. Gottsegen, M.D. v. Merck & Co., Inc., C.A. No. 2:04-3065

Middle District of Louisiana

Michael Wayne Russell v. Merck & Co., Inc., C.A. No. 3:04-712
Linda Kay Hudson v. Merck & Co., Inc., C.A. No. 3:04-776
Jesse Wilkinson v. Merck & Co., Inc., C.A. No. 3:04-800
Wilson Brown v. Merck & Co., Inc., C.A. No. 3:04-801
Dorothy Bracken v. Merck & Co., Inc., C.A. No. 3:04-802
James Edward Benoit v. Merck & Co., Inc., C.A. No. 3:04-803
Clarence Chiszle v. Merck & Co., Inc., C.A. No. 3:04-804

Western District of Louisiana

Anthony J. Mallet, et al. v. Merck & Co., Inc., et al., C.A. No. 2:02-2304
Calvin Warren, et al. v. Merck & Co., Inc., C.A. No. 3:04-2110
Vicki White v. Merck & Co., Inc., C.A. No. 3:04-2126
Norma Merrit, et al. v. Merck & Co., Inc., C.A. No. 5:03-1401
Herchial Wright, et al. v. Merck & Co., Inc., C.A. No. 5:04-2268
Leroy Bates, et al. v. Merck & Co., Inc., C.A. No. 5:04-2269
Vaughn McKnight v. Merck & Co., Inc., C.A. No. 5:04-2270
Josephine Harper v. Merck & Co., Inc., C.A. No. 5:04-2271
Lendell Burns, et al. v. Merck & Co., Inc., C.A. No. 5:04-2272
Leona Sadler v. Merck & Co., Inc., C.A. No. 5:04-2273
William Tice, et al. v. Merck & Co., Inc., C.A. No. 5:04-2274
Maynard Butler, et al. v. Merck & Co., Inc., C.A. No. 5:04-2275
Marion Evans, et al. v. Merck & Co., Inc., C.A. No. 5:04-2276
Donna Lavergne v. Merck & Co., Inc., C.A. No. 6:04-2174

MDL-1657 Schedule A (Continued)

District of Maryland

Lindsey Edler, etc. v. Merck & Co., Inc., C.A. No. 1:03-3612
Melvin Biles v. Merck & Co., Inc., C.A. No. 1:04-975
David Morris, Jr. v. Merck & Co., Inc., C.A. No. 8:04-3024
Daniel Martin Jeffers, et al. v. Merck & Co., Inc., C.A. No. 8:04-3604

District of Massachusetts

Frank R. Saia v. Merck & Co., Inc., C.A. No. 1:04-12166

District of Minnesota

Carolyn Y. Glover v. Merck & Co., Inc., C.A. No. 0:03-5166
Lowell Burriss, Jr. v. Merck & Co., Inc., C.A. No. 0:04-4375
Shirley Homister v. Merck & Co., Inc., C.A. No. 0:04-4754

Northern District of Mississippi

Frances Shannon, et al. v. Merck & Co., Inc., et al., C.A. No. 2:03-105

Southern District of Mississippi

Leona McFarland, et al. v. Merck & Co., Inc., et al., C.A. No. 2:03-247
Bettye J. Magee, et al. v. Merck & Co., Inc., et al., C.A. No. 2:03-249
Jerry Melton v. Merck & Co., Inc., et al., C.A. No. 2:04-372
Janet Sue Morgan, et al. v. Merck & Co., Inc., et al., C.A. No. 3:03-435
Brenda Price, et al. v. Merck & Co., Inc., et al., C.A. No. 3:04-866

Eastern District of Missouri

Deyonne E. Whitmore v. Merck & Co., Inc., C.A. No. 4:03-1354
Janice Perkins v. Merck & Co., Inc., C.A. No. 4:04-1446
Jurhee Bench v. Merck & Co., Inc., C.A. No. 4:04-1447

Western District of Missouri

Caroline Nevels v. Merck & Co., Inc., et al., C.A. No. 4:04-952
Russell Young, etc. v. Merck & Co., C.A. No. 6:04-5117

MDL-1657 Schedule A (Continued)

District of New Jersey

Patrick Besaw v. Merck & Co., Inc., C.A. No. 3:04-5178
Brenda Aguero, et al. v. Merck & Co., Inc., C.A. No. 3:04-5341

Eastern District of New York

Dominick Cain, et al. v. Merck & Co., Inc., et al., C.A. No. 1:01-3441
William Hanson v. Merck & Co., Inc., C.A. No. 1:04-2949
Jerome Covington v. Merck & Co., Inc., C.A. No. 1:04-4439
Alan Mell v. Merck & Co., Inc., C.A. No. 1:04-4606
Lorraine Fialo v. Merck & Co., Inc., C.A. No. 1:04-4686
Lawrence Wright, et al. v. Merck & Co., Inc., C.A. No. 2:04-4485
William Fontanetta, et al. v. Merck & Co., Inc., C.A. No. 2:04-4486

Southern District of New York

Laney C. Davis v. Merck & Co., Inc., C.A. No. 1:04-8082
Elizabeth Aiken v. Merck & Co., Inc., C.A. No. 1:04-8085
Walter McNaughton v. Merck & Co. Inc., C.A. No. 1:04-8297
Carmen M. Pagan, et al. v. Merck & Co., Inc., C.A. No. 1:04-8959
Teamsters Local 237 Welfare Fund, et al. v. Merck & Co., Inc., C.A. No. 1:04-9248
Anna Quick v. Merck & Co., Inc., C.A. No. 7:04-8169

Northern District of Ohio

Marjory Knoll v. Merck & Co., Inc., C.A. No. 1:04-2209
Danford K. Jones, et al. v. Merck & Co., Inc., C.A. No. 1:04-2217
Meadows, et al. v. Merck & Co., Inc., C.A. No. 1:04-2229 9
Wanda Moldovan, et al. v. Merck & Co., Inc., C.A. No. 1:04-2245
Janet Dauterman, et al. v. Merck & Co., Inc., C.A. No. 3:03-7623

Western District of Oklahoma

Paul E. House v. Merck & Co., Inc., C.A. No. 5:04-1235

Eastern District of Pennsylvania

Henry Smith, et al. v. Merck & Co., Inc., C.A. No. 2:04-4713
Michelle Donovan v. Merck & Co., Inc., C.A. No. 2:04-4882
Gwendolyn L. Carr v. Merck & Co., Inc., C.A. No. 2:04-4900
Fred S. Engle v. Merck & Co., Inc., C.A. No. 2:04-5077
Merrick Sirota, et al. v. Merck & Co., Inc., C.A. No. 2:04-5130

MDL-1657 Schedule A (Continued)

District of Puerto Rico

Rafael Gonzalez-Arias, et al. v. Merck & Co., Inc., C.A. No. 3:04-2263

District of South Carolina

Bridget Elaine Michaud, etc. v. Merck & Co., Inc., C.A. No. 4:03-3083

Eastern District of Texas

Arthur Clifford Hall, et al. v. Merck & Co., Inc., C.A. No. 1:04-684

Brenda Lewis, et al. v. Merck & Co., Inc., C.A. No. 1:04-685

Billie Painton, et al. v. Merck & Co., Inc., C.A. No. 1:04-686

Lovincy Richard, et al. v. Merck & Co., Inc., et al., C.A. No. 1:04-703

Bill Jolley, et al. v. Merck & Co., Inc., C.A. No. 2:04-376

Marian Williamson, etc. v. Merck & Co., Inc., C.A. No. 2:04-406

Deborah Daley, etc. v. Merck & Co., Inc., et al., C.A. No. 6:03-509

Northern District of Texas

Dellas Staples, et al. v. Merck & Co., Inc., et al., C.A. No. 3:03-180

Michael R. Leonard v. Merck & Co., Inc., C.A. No. 3:04-2157

Jack A. Register, et al. v. Merck & Co., Inc., et al., C.A. No. 3:04-2259

Southern District of Texas

Heirs of the Estate of Pablo Flores v. Merck & Co., Inc., et al., C.A. No. 2:03-362

Audona Sandoval v. Merck & Co., Inc., C.A. No. 2:04-544

Jeffrey L. Denny, et al. v. Merck & Co., Inc., et al., C.A. No. 3:04-526

Kimberly D. Stubblefield, etc. v. Merck & Co., Inc., et al., C.A. No. 4:02-3139

John P. Eberhardt v. Merck & Co., Inc., C.A. No. 4:03-1380

Myrtle Louise Bell, et al. v. Merck & Co., Inc., et al., C.A. No. 4:03-3448

Thomas Joseph Pikul, etc. v. Merck & Co., Inc., et al., C.A. No. 4:03-3656

Opalene Stringer, et al. v. Merck & Co., Inc., et al., C.A. No. 4:03-3657

Reginald K. Fears v. Merck & Co., Inc., C.A. No. 4:04-4187

Peggy J. Balch v. Merck & Co., Inc., C.A. No. 4:04-4201

John R. Stout v. Merck & Co., Inc., C.A. No. 4:04-4205

Charles C. Gilmore v. Merck & Co., Inc., C.A. No. 4:04-4206

Johnny White v. Merck & Co., Inc., C.A. No. 4:04-4207

Donna Hale v. Merck & Co., Inc., C.A. No. 4:04-4208

Bernadette Young v. Merck & Co., Inc., C.A. No. 4:04-4209

William B. Gregory, Jr. v. Merck & Co., Inc., C.A. No. 4:04-4327

MDL-1657 Schedule A (Continued)

Southern District of Texas (Continued)

Patricia Benavides, etc. v. Merck & Co., Inc., et al., C.A. No. 5:03-134

Patricia Benavides, etc. v. Merck & Co., Inc., et al., C.A. No. 5:04-153

Olga Sanchez v. Merck & Co., Inc., et al., C.A. No. 7:04-352

Maria Emma Hinojosa v. Merck & Co., Inc., C.A. No. 7:04-373

Western District of Texas

Joe Hopson, etc. v. Merck & Co., Inc., et al., C.A. No. 1:04-485

Larry Lee Bauman, et al. v. Merck & Co., Inc., C.A. No. 1:04-707

Carolyn Reed, etc. v. Minor, et al., C.A. No. 1:04-731

District of Utah

Della Jo Salt, et al. v. Merck & Co., Inc., C.A. No. 2:01-794

District of Vermont

Sara Cheeseman v. Merck & Co., Inc., C.A. No. 1:04-261

Western District of Virginia

Catherine Wheatley, etc. v. Merck & Co., Inc., et al., C.A. No. 2:04-20