

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: INSULIN PRICING LITIGATION

MDL No. 3080

TRANSFER ORDER

**Before the Panel:**\* Plaintiff in the action listed on Schedule A (*Pennsylvania*) moves under Panel Rule 7.1 to vacate the order conditionally transferring the action to MDL No. 3080. Defendants<sup>1</sup> oppose the motion and support transfer.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions transferred to MDL No. 3080, 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. In our order establishing this MDL, we held that centralization was warranted for actions alleging a “scheme between insulin manufacturers and pharmacy benefit managers to artificially and fraudulently inflate the price of insulin and other diabetes medications.” *See In re Insulin Pricing Litig.*, \_\_ F. Supp. 3d \_\_, 2023 WL 5065090, at \*3 (J.P.M.L. Aug. 3, 2023). The *Pennsylvania* action undisputedly concerns the same alleged insulin pricing scheme and defendants.

In opposition to transfer, plaintiff principally argues that inefficiencies would result from having the transferee court resolve plaintiff’s motions for remand to state court because case-specific and state law issues are involved. But transferee courts routinely manage remand motions, even when case-specific issues are involved. Moreover, the Panel has held, including in this MDL, that a pending motion for remand is not an impediment to transfer. *See In re Insulin Pricing Litig.*, 2023 WL 5065090, at \*2 (“many of the objections raised by the parties – for example, pending motions for remand . . . – are no obstacle to transfer as such matters routinely are managed by the transferee judge”); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) (explaining that “remand motions can be presented to and decided

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\* Judge Nathaniel M. Gorton and Judge David C. Norton did not participate in the decision of this matter.

<sup>1</sup> Eli Lilly and Company; Novo Nordisk, Inc.; Sanofi-Aventis U.S., LLC; certain Express Scripts entities (Evernorth Health, Inc.; Express Scripts, Inc.; Express Scripts Administrators, LLC; Medco Health Solutions, Inc.; ESI Mail Pharmacy Services, Inc.; and Express Scripts Pharmacy, Inc.); CVS Caremark entities (CVS Health Corporation; CVS Pharmacy, Inc.; Caremark Rx, LLC; CaremarkPCS Health, LLC; Caremark, LLC); and Optum Rx entities (Optum, Inc.; OptumRx, Inc.; OptumInsight, Inc.; and UnitedHealth Group, Inc.).

by the transferee judge,” and that transferor courts wishing to rule on such motions generally “have adequate time in which to do so”).<sup>2</sup>

Plaintiff also objects to transfer on the ground that its action is distinctive with respect to the relief sought – exclusively civil penalties under state law – which allegedly will raise unique legal issues. This argument is unpersuasive. The Panel often has transferred actions involving allegedly unique factual and legal issues to an MDL based on a common factual core with the MDL actions. *See In re Blue Cross Blue Shield Antitrust Litig.*, 908 F. Supp. 2d 1373, 1376 (J.P.M.L. 2012) (“the presence of additional facts or differing legal theories is not significant when the actions still arise from a common factual core”). Here, the *Pennsylvania* complaint arises from the same alleged “insulin pricing scheme” as the actions in the MDL and will involve many of the same factual questions and discovery of the insulin manufacturers and PBMs, notwithstanding an allegedly unique request for relief.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Brian R. Martinotti for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

  
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Karen K. Caldwell

Chair

Matthew F. Kennelly  
Dale A. Kimball

Roger T. Benitez  
Madeline Cox Arleo

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<sup>2</sup> We also observe that several actions in the MDL, like *Pennsylvania*, have asserted lack of federal officer removal jurisdiction in pending motions for remand to state court. The transferee court is well-positioned to efficiently resolve this common issue.

**IN RE: INSULIN PRICING LITIGATION**

MDL No. 3080

**SCHEDULE A**

Eastern District of Pennsylvania

COMMONWEALTH OF PENNSYLVANIA EX REL LAWRENCE S. KRASNER v.  
ELI LILLY AND COMPANY, ET AL., C.A. No. 2:23-04645