



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE )  
HUNTER, ATTORNEY GENERAL OF )  
OKLAHOMA, )

Plaintiff, )

vs. )

PURDUE PHARMA L.P.; PURDUE )  
PHARMA, INC.; THE PURDUE )  
FREDERICK COMPANY; TEVA )  
PHARMACEUTICALS USA, INC.; )  
CEPHALON, INC.; JOHNSON & )  
JOHNSON; JANSSEN )  
PHARMACEUTICALS, INC.; ORTHO- )  
MCNEIL-JANSSEN )  
PHARMACEUTICALS, INC., n/k/a/ )  
JANSSEN PHARMACEUTICALS, INC.; )  
JANSSEN PHARMACEUTICA, INC.; )  
n/k/a JANSSEN PHARMACEUTICALS, )  
INC.; ALLEGRAN, PLC, f/k/a ACTAVIS )  
PLC, f/k/a/ ACTAVIS, INC., f/k/a )  
WATSON PHARMACEUTICALS, INC., )  
WATSON LABORATORIES, INC.; )  
ACTAVIS LLC; and ACTAVIS PHARMA, )  
INC., f/k/a WATSON PHARMA, INC., )

Defendants )

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:  
William C. Hetherington, Jr.

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
**FILED**

FEB 22 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

NON-PARTY OKLAHOMA COUNTIES' REPLY TO  
PURDUE'S OPPOSITION TO THEIR MOTION TO QUASH

COMES NOW Osage County, Pawnee County, Delaware County, Garvin County,  
McClain County, Ottawa County, and Seminole County; (hereafter "Movants") Reply to Purdue  
Pharma L.P., Purdue Pharma, Inc., and The Purdue Pharma Frederick Company's (hereafter  
"Defendants") Response to Movants' Motion to Quash *Subpoenas Duces Tecum*.

Defendants' response grossly misstates the facts and circumstances leading up to the Movants' filing of their Motion to Quash. There was never any agreement reached between Movants and Defendants. Defendants refused to grant an extension of time unless there was an agreement for Movants to waive all their objections. This is not a feasible agreement especially when there is a reasonable basis for the Movants to object. Furthermore, Defendants minimize both this Court's Special Discovery Master's rules and the MDL's orders. As shown below, there are specific grounds to support Movants' Motion to Quash.

### **FACTUAL BACKGROUND**

1. As shown in Movants' initial Motion, the Movants and Defendants were in active litigation in the Northern, Western, and Eastern District of Oklahoma Federal Court. A number of these actions were pending before the Judicial Panel on Multidistrict Litigation ("JPML"), these cases may be moved to an MDL where the Movants and Defendants will have to adhere to specific discovery rules and procedures. Several stays were entered with the pendency of the MDL rulings.

2. Defendants were provided an opportunity for objection prior to the stays being placed, but they failed to do so prior to these rulings. Now, they are seeking information that they were unable to receive in those cases, by issuing subpoenas in this case where none of the Movants are parties.

3. Since that time, the JPML has initiated transfer orders in all but one of Movants' cases against Defendants. *See* Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 84], *Board of County Comm'rs of Pawnee County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-00459-GKF-FHM (N.D. Okla.) attached hereto as "Exhibit 1;" Transfer Order for United States Judicial Panel on Multidistrict

Litigation for MDL No. 2804 [Dkt. No. 81], *Board of County Comm'rs of Delaware County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-00460-CVE-JFJ (N.D. Okla.) attached hereto as "Exhibit 2;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 88], *Board of County Comm'rs of Osage County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-461,GFK-JFJ (N.D. Okla.) attached hereto as "Exhibit 3;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 77], *Board of County Comm'rs of Ottawa County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-466-TCK0JFJ (N.D. Okla.) attached hereto as "Exhibit 4;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 78], *Board of County Comm'rs of Garvin County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-820-HE (W.D. Okla.) attached hereto as "Exhibit 5;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 64], *Board of County Comm'rs of McClain County, State of Oklahoma v. Purdue Pharma L.P., et al* Case No, 18-CV-857-HE (W.D. Okla.) attached hereto as "Exhibit 6." Currently, there is a Notice of hearing before the JPML to take place on March 28, 2019 for Seminole County's Case against Defendants. *See* United States Judicial Panel on Multi District Litigation Notice of Hearing Session for MDL No. 2804 [Dkt. No. 36], *Seminole County Board of County Comm'rs v. Purdue Pharma, LP, et al.*, Case No, 18-CV-00372 (E.D. Okla.) attached hereto as "Exhibit 7."

4. Furthermore, the Defendants presented to this Court that Movants and Defendants entered an agreement. Even with the most favorable interpretation of Defendants' Exhibit 2, it is clear that no agreement was reached. In fact, the Movants' counsel informed the Defendants' counsel that they would not waive any valid defenses for an extension.

5. It is clear that the motivations of Defendants are to circumvent discovery procedures in place where they cannot retrieve information at this time and/or cannot get the information at all whether it be in this case or the MDL. This is nothing more than a fishing expedition to annoy, embarrass, oppress, and/or cause undue burden and expense on the Movants.

6. More so, the argument by the Defendants that Movants are merely claiming the requests are “unfair” is a misstatement of Movants Motion. Movants specified several issues with these requests in their Motion to Quash including the relevancy, necessity, and improperly formatted requests.

7. Movants met their burden to Quash the Subpoenas Duces Tecum from Defendants. Not only did Movants enumerate specific requests and their deficiencies, but it was supported by appropriate authority to support these arguments.

### **ARGUMENTS AND AUTHORITIES**

#### **I. DEFENDANTS’ SCOPE OF DISCOVERY IS NOT UNLIMITED UNDER THE OKLAHOMA DISCOVERY CODE.**

Defendants arguments regarding the broad scope of discovery far exceeds the actual provisions of discoverable information. Under Defendants arguments, tangentially related information, regardless of how far that reach may be, would be discoverable from any non-party. Although the discovery scope is broad, it is not unlimited. *See Buffington v. Gillette Co.*, 101 F.R.D. 400 (W.D. Okla.1980) (citing *Barnett v. Sears, Roebuck and Co.*, 80 F.R.D. 662 (W.D. Okla. 1978)). When the court examines relevancy, it will also evaluate the reasonable possibility that the information sought would lead to admissible evidence. *Buffington, supra.* (citing *Miller v. Doctor’s General Hospital*, 76 F.R.D. 136 (W.D. Okla. 1977)). In other words, there actually

needs to be a close enough nexus to the information that the party is seeking to either prove or disprove a claim or defense.

Defendants even admit in their response that this involves what the State expended due to the Defendants' fraudulent actions. Indeed, they even identify that their cases with Movants are "separate," but are still insisting Movants produce documents that are not relevant to the case before this Court. Considering, it would be hard to accept that this information would be of assistance to Defendants' defense in this case. To take Defendants' argument that these cases are separate, but also accept the argument that they need information from a party, in a separate case, contradicts any support for their reliance on this information.

Much of the cases relied upon by Defendants are also factually distinguishable. As shown by Defendants own admission, there is a separation between the cases with the Counties and State (i.e. separate damages, efforts expended, information in possession of the entities, communications with Defendants). Therefore, Defendants reliance upon *U.S. v. Childs* for relevancy of non-party information is misguided. No. 09-cr-146-D, 2018 WL 775018 (W.D. Okla. Feb. 7, 2018). In the *Childs* case, the defendant had pled guilty to wire fraud and money laundering, but he was provided probation with the order to pay restitution. *Id.* In *Childs*, the defendant wrote bad checks issued by Touch 1 Media LLC and signed by Yvonne Washington. *Id.* The government issued subpoenas to these two non-parties in further efforts to obtain restitution. *Id.* at \*2. Under the circumstances in *Childs*, unlike in the present case, these non-parties were closely involved with the issue for which discovery was being requested. *Id.* Similarly, the *Management Comp. Group Lee v. Okla. State Univ.*, case involved a non-party that had a financial interest in the outcome of the case. No. 11-cv-967, 2011 WL 5326262 (W.D. Okla. November 3, 2011) at \*13. In contrast, here the Movants have their own cases against

Defendants to recover money for their claims and discovery may properly be sought in those actions.

In fact, by Defendants' own arguments, it seems impossible that anything produced by Movants would even remotely prove their defenses in this case. They are seeking information that would be in a county's possession. It is not going to provide the information that Defendants' need regarding: (1) Efforts by the State; (2) the State's policies; (3) Cost expended by the State; (4) Damages to the State; (5) State's communications about opioid litigation or with Purdue. *See, Purdue's Response in Opposition to the Oklahoma Counties' Motion to Quash Purdue's Subpoenas Duces Tecum*, p. 5. Furthermore, the need for this information is misplaced for supporting the Defendants' defense. If the Defendants requested this information, and the State does not have such evidence to present for the State's claim, then the Defendants have their defense (i.e. the State simply doesn't have evidence to support their claims). Ultimately, this proves Defendants truly are just on a fishing expedition and have no actual basis for seeking this information. Likewise, it establishes the subpoenas should be quashed.

**II. EVEN IF THE COURT WERE TO DEEM THAT THE DOCUMENTS REQUESTED ARE RELEVANT, WHICH IS DENIED, THE DEFENDANTS WOULD BE CIRCUMVENTING DISCOVERY PROCEDURES PLACED BY THIS COURT AND THE MDL.**

Even if there was "marginal relevance" to the Defendants' requests, which is denied, the potential harm by circumventing the discovery procedures in place and the stay to Movants far outweighs the "presumption in favor of broad disclosure." *Beach v. City of Olathe, Kan.*, 203 F.R.D. 489, 496 (D. Kan. 2001). In Defendants' response they do not deny the fact that both this Court and the MDL have entered Orders governing discovery procedures. In fact, the Defendants basically agree they are in place, but just argue that such procedures "will not require them to re-produce discovery that they have previously produced." Defendants seek evidence here they

should be seeking in other more appropriate forums under the proper procedures and time lines available in those more appropriate forums.

Defendants' subpoenas request that this Court disregard the Special Discovery Master's Orders and the MDL's procedures in place for the Defendants' conveniences. *See e.g.*, Movants' *Motion to Quash*, Ex. 6-8. However, Defendants' requested conveniences are not necessary to prove their defenses in this case, as they were able to obtain discovery related to their defenses through the actual parties in this case. Furthermore, Defendants are requesting information that ultimately Movants may not even have to produce in the MDL cases. *See e.g.*, Movant's *Motion to Quash*, p. 13-14 and Defendants' requests No. 2-20. Rather than issuing subpoenas to all the counties in the state, Defendants appear to have specifically selected the ones that have pending litigation in other forums against them. Defendants should not be allowed to use this Court as a tool to abuse the discovery process of active litigation to obtain discovery not relevant to the case at hand, but, if relevant to anything, to matters at issue in other appropriate forums. Such discovery should properly be guided by the procedures and timelines in place in those other appropriate forums.

**III. EVEN IF ANY DOCUMENTS MAY BE RELATED TO THIS CASE, WHICH IS DENIED, ANY REQUESTED INFORMATION SOUGHT TO BE PRODUCED BY THE MOVANTS WOULD BE DUPLICATIVE AND CUMULATIVE.**

The Defendants in this case have been provided an opportunity to conduct discovery in this case. However, the Defendants insist the Movants possess information that can prove or disprove the State's claims. *See, Purdue's Response*, p. 5. Even if that were true, the State would possess any information that Defendants do not have in their possession to support the State's claims. Such information should have been requested in discovery to the State. If Defendants had requested such documents from the State and received them, then anything from the Movants

that would be remotely related to the State's claims would be duplicative and cumulative information. Specifically, this is true for Requests Nos. 3, 4, 16, 17, and 19, which are the only requests out of 20 that even mention the State of Oklahoma. The remaining requests are facially irrelevant. Therefore, all requests are irrelevant and/or seek duplicative or cumulative information. Defendants also assert in error, that Movants would possess information related to their defenses, which are clearly in Defendants possession such as "statements by Purdue." *See, e.g., Purdue's Opposition to the Oklahoma Counties' Motion to Quash Purdue's Subpoenas Duces Tecum*, p. 8. The feasibility that the Movants would have evidence of the defendants' own statements that relates to the whole entire State of Oklahoma, not just a few counties, is unlikely. However, it also demonstrates that Defendants' concern is not to get information actually needed to support their defenses, but to end-run around the procedures established by this Court and the MDL to seek information that would not normally be discoverable. Further, Defendants should already possess any such evidence.

#### **IV. MOVANTS PROVIDED A SUFFICIENT BASIS FOR ASSERTING PRIVILEGE FOR THESE REQUESTED DOCUMENTS.**

The Movants' Motion to Quash specifically outlined a number of requests that would seek information protected by privilege and/or work product. *See* Movants' Motion, p. 19-20. Movants made clear without confusion that these requests will seek information that "include attorney-client privilege and work-product." *See* Movants' Motion, p. 19. This is in complete contrast to the case law relied upon by Defendants where a party made contradictory statements regarding whether the information was privileged and even partially released some of the privileged information already to the opposing party. *See Burke v. Glanz*, No.11-cv-720, 2013WL 3994634, at \*7 (N.D. Okla. Aug. 5, 2013). Furthermore, the Movants clearly



demonstrated specific statutory provisions which do not allow disclosure of the requested information. *See* Movants' Motion, p. 21-23.

Considering that these documents are subject to privilege, the Defendants must "show[] that it has substantial need for the material to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." *Hill v. City of Okla. City*, 2017 U.S. Dist. Lexis 78073, at \*2 (May 23, 2017 (citing Fed. R. Civ. P. 26(b)(3)(A)(ii))). As Movants have stated, the information that Defendants need for this case is from their own records and the State's responses to discovery. There is no reason to rummage through the Movants' records which are privileged to support their defenses.

**V. BEYOND THE ISSUE OF RELEVANCY, MOVANTS HAVE DEMONSTRATED GOOD CAUSE TO QUASH THE SUBPOENAS AS THE REQUESTS FACIALLY FAIL.**

Movants provided more than buzzwords into their Motion to Quash to support their good cause. It is well held by courts that discovery requests are unduly burdensome on their face when they use omnibus terms. *See Movants' Motion*, p. 17-18; *see also Aikens v. Deluxe Fin. Servs., Inc.*, 217 F.R.D. 533, 538 (D. Kan. 2013) (Discovery may be overly broad on its face when it uses terms such as "regarding," "relating to," or "pertaining to"). Specifically, Defendants' requests No. 2-7 and 10-20 contain these terms making the requests facially overbroad and unduly burdensome. Only 3 out of the 20 topics can pass this standard. In short, Defendants improperly seek discovery that is irrelevant, duplicative, overly broad, unduly burdensome, privileged, facially invalid, and more appropriately sought in other forums under other proper procedures and timelines.

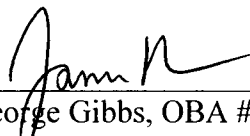
## CONCLUSION

The Defendants continue to hang on to the assertion that the Subpoenas Duces Tecum will afford them the opportunity to gather evidence relevant to the State's claims and their defenses. This is regardless of the fact that they have been afforded the opportunity to get discovery from the State with agreed upon and fine-tuned provisions set forth by the Special Discovery Master. The Defendants go as far as to grossly assert an agreement that was never obtained between Movants and Defendants to this court to get unnecessary information. Finally, Defendants seek to obtain the information in this Court as an improper end-run around the appropriate other forum court's procedures, where the Movants and Defendants are parties. The information requested is irrelevant to this action, and should be sought, if relevant to the other actions, in the other actions.

WHEREFORE, and for the reasons set forth in the Motion to Quash, Movants requests that the Court quash Defendants' *Subpoenas Duces Tecum*.

Respectfully submitted,

**GIBBS ARMSTRONG BOROCHOFF, P.C.**



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## CERTIFICATE OF SERVICE

I certify that on the 21<sup>st</sup> day of February 2019, a true and correct copy of the above and foregoing instrument was:

  X   mailed with postage prepaid thereon;  
       mailed by certified mail, Return Receipt No. \_\_\_\_\_;  
       transmitted via facsimile; or  
       hand-delivered;

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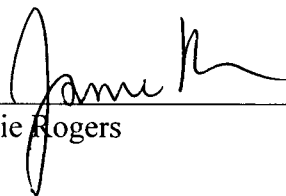
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\_\_\_\_\_  
Jamie Rogers

U.S. District Court  
Northern District of Ohio  
By: /s/Robert Pitts  
Deputy Clerk



**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804  
18-cv-00459-GKF-FHM

**TRANSFER ORDER**

**Before the Panel:** Plaintiffs in 22 actions and certain physician defendants<sup>1</sup> in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*<sup>2</sup> support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants<sup>3</sup> oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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\* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

<sup>1</sup> Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

<sup>2</sup> West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

<sup>3</sup> Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



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country. See *In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants’ alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers’ allegedly improper marketing of such drugs. The actions therefore fall within the MDL’s ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.<sup>4</sup> Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. See *In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.<sup>5</sup>

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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<sup>4</sup> 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).

<sup>5</sup> See *In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

-3-

outweighed by the substantial factual allegations shared with the MDL actions.<sup>6</sup> Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,<sup>7</sup> and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan  
Catherine D. Perry

R. David Proctor  
Karen K. Caldwell

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<sup>6</sup> “Section 1407 does not require a complete identity or even majority of common factual and legal issues.” *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu...”).

<sup>7</sup> *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that “the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.”) (citations omitted).



- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719  
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.  
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00459  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00460  
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00461  
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820  
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

18-cv-460-CVE-JFJ

IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION

MDL No. 2804

TRANSFER ORDER

**Before the Panel:**<sup>\*</sup> Plaintiffs in 22 actions and certain physician defendants<sup>1</sup> in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*<sup>2</sup> support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants<sup>3</sup> oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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\* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

<sup>1</sup> Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

<sup>2</sup> West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

<sup>3</sup> Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



-2-

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants’ alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers’ allegedly improper marketing of such drugs. The actions therefore fall within the MDL’s ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.<sup>4</sup> Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.<sup>5</sup>

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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<sup>4</sup> *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).

<sup>5</sup> *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

-3-

outweighed by the substantial factual allegations shared with the MDL actions.<sup>6</sup> Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,<sup>7</sup> and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan  
Catherine D. Perry

R. David Proctor  
Karen K. Caldwell

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<sup>6</sup> “Section 1407 does not require a complete identity or even majority of common factual and legal issues.” *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu...”).

<sup>7</sup> *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that “the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.”) (citations omitted).

- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719  
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.  
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460  
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461  
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820  
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF  
OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231



Activity in Case MDL No. 2804 IN RE: National Prescription Opiate Litigation  
Transfer Order

JPMLCMECF to: JPMLCMDEC

12/06/2018 10:14 AM

From: JPMLCMECF@jpml.uscourts.gov

To: JPMLCMDEC@jpml.uscourts.gov

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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United States

United States Judicial Panel on Multidistrict Litigation

**Notice of Electronic Filing**

The following transaction was entered on 12/6/2018 at 11:12 AM EST and filed on 12/6/2018

**Case Name:** IN RE: National Prescription Opiate Litigation

**Case Number:** MDL No. 2804

**Filer:**

**Document Number:** 3169

**Docket Text:**

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in

WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ( [2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ( [2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ( [2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ( [2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ( [2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ( [2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ( [2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ( [2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ( [2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ( [2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ( [2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ( [2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ( [2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ( [2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name: Board of County Commissioners of Delaware County, State of Oklahoma,  
The v. Purde Pharma L.P. et al  
Case Number: OKN/4:18-cv-00460  
Filer:  
Document Number: 45

Docket Text:  
erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in

ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ( [2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ( [2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ( [2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ( [2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ( [2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ( [2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ( [2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ( [2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ( [2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ( [2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ( [2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ( [2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ( [2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ( [2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name: CITY OF LEWISTON v. PURDUE PHARMA LP et al  
Case Number: ME/2:18-cv-00310  
Filer:  
Document Number: 48



UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

18-cv-461-GKF-JFJ

IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION

MDL No. 2804

TRANSFER ORDER

**Before the Panel:**\* Plaintiffs in 22 actions and certain physician defendants<sup>1</sup> in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*<sup>2</sup> support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants<sup>3</sup> oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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\* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

<sup>1</sup> Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

<sup>2</sup> West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

<sup>3</sup> Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



-2-

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants’ alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers’ allegedly improper marketing of such drugs. The actions therefore fall within the MDL’s ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.<sup>4</sup> Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.<sup>5</sup>

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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<sup>4</sup> *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).

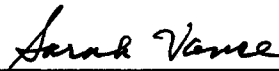
<sup>5</sup> *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

-3-

outweighed by the substantial factual allegations shared with the MDL actions.<sup>6</sup> Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,<sup>7</sup> and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



---

Sarah S. Vance  
Chair

Lewis A. Kaplan  
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R. David Proctor  
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<sup>6</sup> “Section 1407 does not require a complete identity or even majority of common factual and legal issues.” *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu...”).

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**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804

**SCHEDULE A**

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508  
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL.,  
C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 1:18-05288  
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE,  
INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298  
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282  
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719  
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.  
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460  
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461  
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820  
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF  
OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231



Activity in Case MDL No. 2804 IN RE: National Prescription Opiate Litigation  
Transfer Order

JPMLCMECF to: JPMLCMDEC

12/06/2018 10:14 AM

From: JPMLCMECF@jpml.uscourts.gov  
To: JPMLCMDEC@jpml.uscourts.gov

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United States

United States Judicial Panel on Multidistrict Litigation

### Notice of Electronic Filing

The following transaction was entered on 12/6/2018 at 11:12 AM EST and filed on 12/6/2018

**Case Name:** IN RE: National Prescription Opiate Litigation

**Case Number:** MDL No. 2804

**Filer:**

**Document Number:** 3169

### Docket Text:

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in

**(CMD)**

**Case Name:** Board of County Commissioners of Osage County, State of Oklahoma, The  
v. Purde Pharma L.P. et al  
**Case Number:** OKN/4:18-cv-00461  
**Filer:**  
**Document**  
**Number:** 45

**Docket Text:**

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ( [2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ( [2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ( [2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ( [2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ( [2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ( [2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ( [2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ( [2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ( [2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ( [2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ( [2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ( [2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ( [2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ( [2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION,  
on 12/6/2018.

**Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)**

**MDL No. 2804 Notice has been electronically mailed to:**

Mark Steven Cheffo mark.cheffo@dechert.com, Maka.Oganesian@dechert.com, Mara.cuskergonzalez@dechert.com, Rachel.Passaretti-Wu@dechert.com, Suchan.Kim@dechert.com, maracusker.gonzalez@dechert.com, mark-cheffo-0500@ecf.pacerpro.com, sam.rosen@dechert.com

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**MDL No. 2804 Notice will not be electronically mailed to:**

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John T Lay jlay@gwblawfirm.com



UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION

MDL No. 2804

18-cv-466-TCK-JFJ

TRANSFER ORDER

**Before the Panel:**\* Plaintiffs in 22 actions and certain physician defendants<sup>1</sup> in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*<sup>2</sup> support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants<sup>3</sup> oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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\* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

<sup>1</sup> Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

<sup>2</sup> West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

<sup>3</sup> Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinckrodt plc, Mallinckrodt LLC; Normaco, Inc.; Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



-2-

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

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Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.<sup>5</sup>

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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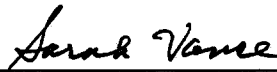
<sup>5</sup> *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

-3-

outweighed by the substantial factual allegations shared with the MDL actions.<sup>6</sup> Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,<sup>7</sup> and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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<sup>7</sup> *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that “the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.”) (citations omitted).

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804

**SCHEDULE A**

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 3:18-04535

Northern District of Georgia

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HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL.,  
C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 1:18-05288  
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE,  
INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298  
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282  
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719  
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.  
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00459  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00460  
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00461  
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF  
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820  
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231



Activity in Case MDL No. 2804 IN RE: National Prescription Opiate Litigation  
Transfer Order  
JPMLCMECF to: JPMLCMDECF

12/06/2018 10:14 AM

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United States

**United States Judicial Panel on Multidistrict Litigation**

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**Case Name:** IN RE: National Prescription Opiate Litigation

**Case Number:** MDL No. 2804

**Filer:**

**Document Number:** 3169

**Docket Text:**

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in

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Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name: Board of County Commissioners of Ottawa County, State of Oklahoma, The

v. Purde Pharma L.P. et al

Case Number: OKN/4:18-cv-00466

Filer:

Document  
Number: 45

**Docket Text:**

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ( [2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ( [2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ( [2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ( [2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ( [2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ( [2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ( [2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ( [2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ( [2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ( [2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ( [2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ( [2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ( [2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ( [2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983,



NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name: Commonwealth of Kentucky et al v. Walgreens Boots Alliance, Inc. et al  
Case Number: KYE/2:18-cv-00126  
Filer:  
Document Number: 25

**Docket Text:**

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ( [2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ( [2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ( [2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ( [2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ( [2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ( [2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ( [2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ( [2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ( [2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ( [2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ( [2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ( [2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ( [2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ( [2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION,

U.S. District Court  
Northern District of Ohio  
By: /s/Robert Pitts  
Deputy Clerk



**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiffs in 22 actions and certain physician defendants<sup>1</sup> in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*<sup>2</sup> support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants<sup>3</sup> oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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\* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

<sup>1</sup> Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

<sup>2</sup> West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

<sup>3</sup> Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



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country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants’ alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers’ allegedly improper marketing of such drugs. The actions therefore fall within the MDL’s ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.<sup>4</sup> Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.<sup>5</sup>

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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<sup>4</sup> *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).


<sup>5</sup> *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

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outweighed by the substantial factual allegations shared with the MDL actions.<sup>6</sup> Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,<sup>7</sup> and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan  
Catherine D. Perry

R. David Proctor  
Karen K. Caldwell

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<sup>6</sup> “Section 1407 does not require a complete identity or even majority of common factual and legal issues.” *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu...”).

<sup>7</sup> *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that “the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.”) (citations omitted).

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804

**SCHEDULE A**

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508  
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL.,  
C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 1:18-05288  
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE,  
INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298  
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282  
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719  
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.  
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460  
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461  
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820  
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF  
OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

U.S. District Court  
Northern District of Ohio  
By: /s/Robert Pitts  
Deputy Clerk



**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804

**TRANSFER ORDER**

**Before the Panel:**<sup>\*</sup> Plaintiffs in 22 actions and certain physician defendants<sup>1</sup> in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*<sup>2</sup> support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants<sup>3</sup> oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, 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. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

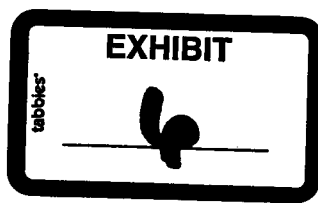
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\* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

<sup>1</sup> Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

<sup>2</sup> West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

<sup>3</sup> Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.; Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



-2-

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants’ alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers’ allegedly improper marketing of such drugs. The actions therefore fall within the MDL’s ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.<sup>4</sup> Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.<sup>5</sup>

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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<sup>4</sup> *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).

<sup>5</sup> *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

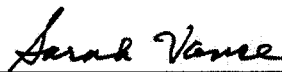


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outweighed by the substantial factual allegations shared with the MDL actions.<sup>6</sup> Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,<sup>7</sup> and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan  
Catherine D. Perry

R. David Proctor  
Karen K. Caldwell

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<sup>6</sup> “Section 1407 does not require a complete identity or even majority of common factual and legal issues.” *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu...”).

<sup>7</sup> *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that “the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.”) (citations omitted).

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

MDL No. 2804

**SCHEDULE A**

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508  
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL.,  
C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL.,  
C.A. No. 1:18-05288  
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE,  
INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298  
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282  
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719  
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.  
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460  
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461  
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF  
OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF  
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820  
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF  
OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**NOTICE OF HEARING SESSION**

Pursuant to the order of the United States Judicial Panel on Multidistrict Litigation filed today, notice is hereby given that a hearing session has been scheduled to consider various matters under 28 U.S.C. § 1407.

**DATE OF HEARING SESSION:**                    **March 28, 2019**

**LOCATION OF HEARING SESSION:**    E. Barrett Prettyman United States Courthouse  
Ceremonial Courtroom No. 20, 6th Floor  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

**TIME OF HEARING SESSION:** In those matters designated for oral argument, counsel presenting oral argument must be present at **8:00 a.m.** in order for the Panel to allocate the amount of time for oral argument. Oral argument will commence at **9:30 a.m.**

**SCHEDULED MATTERS:** Matters scheduled for consideration at this hearing session are listed on the enclosed Hearing Session Order and Schedule of Matters for Hearing Session.

- Section A of this Schedule lists the matters designated for oral argument and includes all actions encompassed by Motion(s) for transfer filed pursuant to Rules 6.1 and 6.2. Any party waiving oral argument pursuant to Rule 11.1(d) need not attend the Hearing Session.
- Section B of this Schedule lists the matters that the Panel has determined to consider **without oral argument**, pursuant to Rule 11.1(c). Parties and counsel involved in these matters need not attend the Hearing Session.

**ORAL ARGUMENT:**

- The Panel carefully considers the positions advocated in filings with the Panel when it allocates time to attorneys presenting oral argument. The Panel, therefore, expects attorneys to adhere to those positions including those concerning an appropriate transferee district. Any change in position should be conveyed to Panel staff before the beginning of oral argument. Where an attorney thereafter advocates a position different from that conveyed to Panel staff, the Panel may reduce the allotted argument time and decline to hear further from that attorney.



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- The Panel expects attorneys presenting oral argument to be prepared to discuss what steps they have taken to pursue alternatives to centralization including, but not limited to, engaging in informal coordination of discovery and scheduling, and seeking Section 1404 transfer of one or more of the subject cases.

For those matters listed on Section A of the Schedule, the "Notice of Presentation or Waiver of Oral Argument" must be filed in this office no later than **March 11, 2019**. The procedures governing Panel oral argument (Panel Rule 11.1) are attached. The Panel strictly adheres to these procedures.

FOR THE PANEL:

  
Jeffery N. Lüthi  
Clerk of the Panel

cc: Clerk, United States District Court for the District of Columbia

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

**HEARING SESSION ORDER**

The Panel issues the following orders in connection with its next hearing session,

IT IS ORDERED that on March 28, 2019, the Panel will convene a hearing session in Washington, D.C., to consider the matters on the attached Schedule under 28 U.S.C. § 1407.

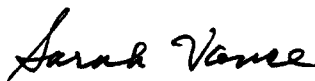
IT IS FURTHER ORDERED that the Panel may, on its own initiative, consider transfer of any or all of the actions in those matters to any district or districts.

IT IS FURTHER ORDERED that the Panel will hear oral argument on the matters listed on Section A of the attached Schedule, unless the parties waive oral argument or unless the Panel later decides to dispense with oral argument pursuant to Panel Rule 11.1(c).

IT IS FURTHER ORDERED that the Panel will consider without oral argument the matters listed on Section B of the attached Schedule pursuant to Panel Rule 11.1(c). The Panel reserves the prerogative, on any basis including submissions of parties pursuant to Panel Rule 11.1(b), to designate any of those matters for oral argument.

IT IS FURTHER ORDERED that the Clerk of the Judicial Panel on Multidistrict Litigation shall direct notice of this hearing session to counsel for all parties involved in the matters on the attached Schedule.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan	Ellen Segal Huvelle
R. David Proctor	Catherine D. Perry
Karen K. Caldwell	Nathaniel M. Gorton

**SECTION B**  
**MATTERS DESIGNATED FOR CONSIDERATION WITHOUT ORAL ARGUMENT**

**MDL No. 1877 – IN RE: CLASSICSTAR MARE LEASE LITIGATION**

Oppositions of plaintiffs John Goyak, et al., and defendant David Lieberman to remand, under 28 U.S.C. § 1407(a), of the following action to the United States District Court for the Eastern District of Michigan:

Eastern District of Kentucky

GOYAK, ET AL. v. CLASSICSTAR RACING STABLE, LLC, ET AL.,  
C.A. No. 5:08-00053 (E.D. Michigan, C.A. No. 1:07-15260)

**MDL No. 2244 – IN RE: DEPUY ORTHOPAEDICS, INC., PINNACLE HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

Oppositions of plaintiffs Pat Patton and Donald Massey and defendants Russell N.A. Cecil, M.D.; Mohawk Valley Orthopedics, P.C.; St. Marys Healthcare; St. Marys Hospital at Amsterdam; and The Ortho Store, Inc., to transfer of their respective following actions to the United States District Court for the Northern District of Texas:

Central District of California

PATTON v. DEPUY ORTHOPAEDICS, INC., ET AL., C.A. No. 2:19-00081

Northern District of New York

MASSEY v. CECIL, ET AL., C.A. No. 1:19-00049

**MDL No. 2428 – IN RE: FRESENIUS GRANUFLO/NATURALYTE DIALYSATE PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Grace Del Rosario Aquino, et al., to transfer of the following action to the United States District Court for the District of Massachusetts:

Central District of California

AQUINO, ET AL. v. FRESENIUS USA, INC., ET AL., C.A. No. 2:18-09987

**MDL No. 2742 - IN RE: SUNEDISON, INC., SECURITIES LITIGATION**

Opposition of plaintiff SESL Recovery, LLC, to transfer of the following action to the United States District Court for the Southern District of New York:

Northern District of California

SESL RECOVERY, LLC v. DEUTSCHE BANK SECURITIES, INC.,  
C.A. No. 3:19-00096

**MDL No. 2775 - IN RE: SMITH & NEPHEW BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

Oppositions of plaintiffs Lisa Schehrer and Charles M. Fondren and defendant Greenwood Leflore Hospital to transfer of their respective following actions to the United States District Court for the District of Maryland:

District of Kansas

SCHEHRER v. SMITH & NEPHEW, INC., ET AL., C.A. No. 2:19-02003

Northern District of Mississippi

FONDREN v. SMITH & NEPHEW, INC., ET AL., C.A. No. 4:18-00256

**MDL No. 2804 - IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION**

Oppositions of plaintiffs and defendants Mylan Bertek Pharmaceuticals Inc.; Mark Cieniawski, M.D.; and Michael B. Bruehl, M.D., to transfer of their respective following actions to the United States District Court for the Northern District of Ohio:

Northern District of Georgia

COUNTY OF FANNIN v. RITE AID OF GEORGIA, INC., ET AL.,  
C.A. No. 2:18-00220

District of Maine

CITY OF WATERVILLE v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00014  
CITY OF AUGUSTA v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00017  
AROOSTOOK COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00018  
PENOBSCOT COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00019  
WASHINGTON COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00024



SOMERSET COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00025  
ANDROSCOGGIN COUNTY v. PURDUE PHARMA LP, ET AL.,  
C.A. No. 2:19-00012  
CITY OF AUBURN v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00013  
SAGADAHOC COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00020  
LINCOLN COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00021  
YORK COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00022

Western District of Missouri

TUDHOPE, ET AL. v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL.,  
C.A. No. 4:18-00932

Southern District of Ohio

MEIGS COUNTY, OHIO v. CARDINAL HEALTH, INC., ET AL.,  
C.A. No. 2:18-01582  
WASHINGTON COUNTY, OHIO BY ITS COMMISSIONERS, ET AL. v. CARDINAL  
HEALTH, INC., ET AL., C.A. No. 2:18-01706

Eastern District of Oklahoma

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS v. PURDUE  
PHARMA, LP, ET AL., C.A. No. 6:18-00372

Western District of Oklahoma

CHEYENNE AND ARAPAHO TRIBES v. PURDUE PHARMA LP, ET AL.,  
C.A. No. 5:19-00039  
CHEYENNE AND ARAPAHO TRIBES v. WATSON LABORATORIES, INC.,  
ET AL., C.A. No. 5:19-00042

Eastern District of Pennsylvania

COUNTY OF CARBON v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-05625  
DELAWARE COUNTY, PENNSYLVANIA v. PURDUE PHARMA L.P., ET AL.,  
C.A. No. 2:18-05627

Southern District of Texas

COUNTY OF BLANCO v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-04705  
COUNTY OF JASPER v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-04706  
COUNTY OF ANGELINA v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-04707