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WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

IN RE: ACTOS® (PIOGLITAZONE)  
PRODUCTS LIABILITY LITIGATION

MDL No. 6:11-md-2299

JUDGE DOHERTY

This Document Applies To:

*Bernor, et al. v. Takeda Pharmaceuticals America,  
Inc., et al.*

MAGISTRATE JUDGE HANNA

Civil Action No. 6:12-cv-01795

**SUGGESTION OF REMAND**

The captioned matter is before this Court pursuant to a Conditional Transfer Order (“CTO”) entered by the United States Judicial Panel on Multidistrict Litigation (“the Panel”) on June 21, 2012 [Rec. Doc. 17; MDL Rec. Doc. 1364]. For the reasons given below, this Court has determined this matter will no longer benefit from coordinated pretrial proceedings, and is therefore ripe for remand by the Panel. Consequently, this Court recommends the captioned matter be remanded by the Panel to the Central District of California.

Under 28 U.S.C. § 1407(a), a case transferred by CTO can be remanded to the district court from which it originated “at or before the conclusion” of pretrial proceedings. A transferee judge can recommend an action be remanded at any time by filing a suggestion of remand with the Panel.<sup>1</sup> The Panel gives “great weight” to the transferee judge’s determination that remand is appropriate,<sup>2</sup> and consequently the transferee judge is guided by the same standards used by the

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Judicial Panel on Multidistrict Litigation, Rule 10.1(b), 42 U.S.C.A. foll. § 1407.

<sup>2</sup>

*In re: Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, MDL No. 1307, 560 F.Supp.2d 1349, 1350 (J.P.M.L. 2008), citing *In re IBM Peripheral EDP Devices Antitrust Litigation*, 407 F.Supp. 254, 256 (J.P.M.L. 1976).

Panel in making that determination.<sup>3</sup> To that end, remand should only occur for good cause,<sup>4</sup> and the transferee court should endeavor to determine whether a case will benefit from further coordinated proceedings as part of the MDL,<sup>5</sup> or whether everything that remains to be done in the case is case specific.<sup>6</sup> Remand is not advised when doing so would frustrate the purposes of consolidation, *e.g.*, avoiding duplicative discovery, preventing inconsistent pretrial rulings, and conserving the resources of the court and of the parties and counsel.<sup>7</sup>

Gary Bernor, William Jr. Buntin, Rogelio Sanchez, and Jadine Surrect (“plaintiffs”) originally filed their suit in the Superior Court of the State of California for the County of Los Angeles, seeking to represent a putative class consisting of “[a]ll consumers who have been prescribed and purchased or paid, in part or all, of the purchase price other than for resale of the prescription drug Actos in the state of California since 1999,” [Rec. Doc. 1, p. 2]. The suit was removed to the United States District Court for the Central District of California on June 4, 2012, and subsequently transferred to this Court by the Panel on June 21, 2012 [Rec. Doc. 17; MDL Rec. Doc. 1364]. Rather than seeking damages for bladder cancer allegedly caused by Actos, plaintiffs’ complaint seeks “recovery for [plaintiffs’] payments for Actos and the amounts

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<sup>3</sup> *In re Bridgestone/Firestone, Inc. ATX, ATX II, and Wilderness Tire Products Liability Litig.*, 128 F.Supp.2d 1196, 1197 (S.D. In. 2001).

<sup>4</sup> *In re Merrill Lynch Auction Rate Sec. Litig.*, No. 09 MD 2030(LAP), 2010 WL 2541227, at \*2 (S.D.N.Y. June 11, 2010).

<sup>5</sup> *Id.*, *In re Bridgestone/Firestone ATX, ATX II* at 1197; *In re Air Crash Disaster*, 461 F.Supp. 671, 672-673 (J.P.M.L. 1978).

<sup>6</sup> *In re Bridgestone/Firestone ATX, ATXII* at 1197; see also *In re Patenaude*, 210 F.3d 135, 145 (3rd Cir. 2000).

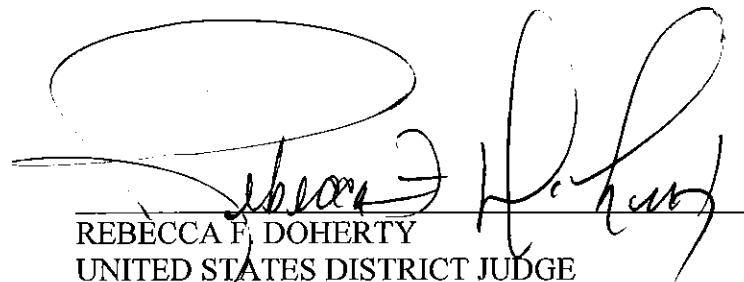
<sup>7</sup> *In re Merrill Lynch Auction Rate Sec. Litig.*, 2010 WL 2541227 at \*2, citing *In re Heritage Bonds Litigation*, 217 F.Supp.2d 1369, 1370 (J.P.M.L. 2002).

by which Defendants were unjustly enriched on behalf of a California State class” [Rec. Doc. 1, p. 13].

This MDL was created to provide consolidated proceedings on claims that Actos® increased the risk of developing bladder cancer, and that the defendants knew of that risk, concealed their knowledge of it, and failed to provide adequate warnings about that increased risk [MDL Rec. Doc. 1, p. 1]. Consolidated discovery as to all such claims has concluded, a bellwether trial based on that discovery has been completed, and a Settlement Program with nearly global participation of claimants alleging bladder cancer is nearing resolution. Plaintiffs, however, seek economic recovery for alleged overpayments resulting from the allegedly fraudulent manner in which Actos® was marketed. Furthermore, plaintiffs bring those claims under California law, and seek to represent similarly situated residents of California. Consequently, this Court determines that any progress to be made in the captioned matter must address questions of fact and law that are specific to plaintiffs’ claims, and therefore the captioned matter will not benefit further from consolidated treatment in MDL 2299.

Therefore, this Court respectfully suggests that the Judicial Panel on Multidistrict Litigation remand *Bernor, et al. v. Takeda Pharmaceuticals America, Inc., et al.* (W.D. La. Civil Action No. 6:12-cv-01795) to the United States District Court for the Central District of California.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 19 day of Sept., 2017.

  
REBECCA F. DOHERTY  
UNITED STATES DISTRICT JUDGE

## General Information

<b>Court</b>	United States District Court for the Western District of Louisiana; United States District Court for the Western District of Louisiana
<b>Federal Nature of Suit</b>	Personal Injury - Product Liability[365]
<b>Docket Number</b>	6:11-md-02299