

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
(at Covington)

IN RE: DARVOCET, DARVON, AND	)	
PROPOXYPHENE PRODUCTS	)	Master File No. 2: 11-md-2226-DCR
LIABILITY LITIGATION	)	MDL Docket No. 2226
	)	
<i>Bowen, et al., v. McKesson Corp., et al.,</i>	)	Civil Action No. 2: 13-058-DCR
<i>Mitchell, et al., v. McKesson Corp., et al.,</i>	)	Civil Action No. 2: 13-060-DCR
<i>Dadoush, et al., v. McKesson Corp., et al.,</i>	)	Civil Action No. 2: 13-073-DCR
<i>Gomez, et al., v. McKesson Corp., et al.,</i>	)	Civil Action No. 2: 13-074-DCR
<i>Saunders, et al., v. McKesson Corp., et al.,</i>	)	Civil Action No. 2: 13-075-DCR
	)	
	)	
	)	<b>MEMORANDUM ORDER</b>
	)	

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On May 15, 2015, this Court granted the plaintiffs’ request for a suggestion of remand in the above-captioned cases, together with companion motions in two additional cases styled: *Baltazar, et al., v. McKesson Corp., et al.*, Civil Action No. 2: 13-061-DCR, and *Jasmin, et al., v. McKesson Corp., et al.*, Civil Action No. 2: 13-076-DCR. [MDL Record No. 3057] As noted in the Court’s opinion, ultimately, the decision to remand these cases to the transferor court rests with the Judicial Panel on Multi-district Litigation (“JPML”). The Court suggested remand because the actions were removed solely on the basis of the Class Action Fairness Act of 2005 (“CAFA”) but without the consent of a majority of the plaintiffs in the respective cases. As a matter of judicial economy, however, the Court stayed further proceedings to allow the defendants to appeal its determination to the United States Court of Appeals for the Sixth Circuit.

On November 17, 2015, the Sixth Circuit denied the defendants' contention that the Court's May 15, 2015 ruling is appealable as a collateral order under 28 U.S.C. § 1291. [MDL Record Nos. 3112 and 3113] As a result, the appellate court dismissed the appeals for lack of jurisdiction. Thereafter, the JPML lifted the stay by minute order dated November 20, 2015.

While the above-referenced interlocutory appeals were pending before the Sixth Circuit, the parties filed joint motions to dismiss the claims of several plaintiffs in five of the seven remaining MDL cases. [MDL Record Nos. 3107, 3108, 3109, 3110, and 3111] If granted, the joint motions would dismiss the claims of several plaintiffs asserted against Defendant Eli Lilly and Company, without prejudice, for a period of 90 days. However, the joint motions further provide that, following this 90-day period, the "dismissed plaintiffs" would be allowed to file new, individual complaints in this district to re-assert claims against Defendant Eli Lilly and Company, provided that certain evidentiary support is attached as an exhibit.

The Court will deny these motions because the procedures outlined by the parties in their pending joint motions would essentially circumvent this Court's previous decision that the matters should be remanded to the original transferor courts. Assuming the JPML remands these remaining cases in accordance with this Court's earlier suggestion, the parties may renew their motions with the transferor courts. Accordingly, it is hereby

**ORDERED** that the parties' joint motions to dismiss the claims of certain plaintiffs against Defendant Eli Lilly and Company [MDL Record Nos. 3107, 3108, 3109, 3110, and 3111] are **DENIED**, without prejudice.

This 23<sup>rd</sup> day of November, 2015.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**