

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: LISTERINE TOTAL CARE
MOUTHWASH MARKETING AND
SALES PRACTICES LITIGATION**

MDL No. 2210

TRANSFER ORDER

Before the Panel:* Plaintiff in the action pending in the Southern District of Florida (*Pelkey*) has moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of this litigation in the Southern District of Florida. Defendants¹ support the motion. Plaintiff in the District of New Jersey *Evoy* action agrees that centralization is appropriate and supports centralization in any court in which a related action is pending. Plaintiff in the Northern District of California action (*Britton*) suggests centralization in the Northern District of California. Plaintiff in a potential tag-along action supports centralization in the Southern District of Florida or the District of New Jersey.

This litigation currently consists of four actions listed on Schedule A and pending in three districts, two actions in the District of New Jersey and one action each in the Northern District of California and the Southern District of Florida.²

On the basis of the papers filed and hearing session held, we find that these actions involve common questions of fact, and that centralization under Section 1407 in the Southern District of Florida will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share factual questions arising out of allegations that defendants' representations regarding Listerine Total Care Anticavity Mouthwash (Total Care) were misleading insofar as they claimed that Total Care fights plaque above the gum line and prevents cavities. All responding parties agree that centralization is appropriate. Centralization will eliminate

* Judges John G. Heyburn II and Kathryn H. Vratil took no part in the decision of this matter.

¹ McNeil-PPC, Inc., Johnson & Johnson, Johnson & Johnson Healthcare Products Division of McNeil-PPC, Inc., McNeil Consumer Healthcare, and Johnson & Johnson Consumer Products, Inc.

² The parties have notified the Panel that three additional related actions are pending, one action each in the Central District of California, the Northern District of California, and the District of New Hampshire. These actions are potential tag-along actions. See Rule 7.1, R.P.J.P.M.L.


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duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.

Any of the three districts in which a constituent action is pending would be a suitable transferee district. All actions were filed within a few weeks of each other and none are particularly advanced. After considering all factors, the Panel has decided to order centralization in the Southern District of Florida. Defendants and some plaintiffs support centralization in the Southern District of Florida, and this district is presiding over fewer MDL dockets than other proposed districts. Judge William P. Dimitrouleas is well-qualified to steer this litigation.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Southern District of Florida are transferred to the Southern District of Florida and, with the consent of that court, assigned to the Honorable William P. Dimitrouleas for coordinated or consolidated pretrial proceedings with the action pending there and listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



David R. Hansen
Acting Chairman

W. Royal Furgeson, Jr.
Barbara S. Jones

Frank C. Damrell, Jr.
Paul J. Barbadoro

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SCHEDULE A

Northern District of California

Charlene A. Britton v. Johnson & Johnson, et al., C.A. No. 3:10-04450

Southern District of Florida

Nikki Pelkey v. McNeil Consumer Healthcare, C.A. No. 0:10-61853

District of New Jersey

David Evoy v. Johnson & Johnson Healthcare Products Division of McNeil-PPC, Inc.,
C.A. No. 2:10-05252

Scott J. Duca v. Johnson & Johnson, et al., C.A. No. 3:10-05292

Certified to be a true and
correct copy of the document on file
Steven M. Larimore, Clerk,
U.S. District Court
Southern District of Florida
By Graciela Gomez
Deputy Clerk
Date 02/17/2011