

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ABBOTT LABORATORIES, et al.,)
PRETERM INFANT NUTRITION PRODUCTS) MDL No. 3026
LIABILITY LITIGATION)
) Master Docket No. 22 C 71
)
) Judge Rebecca R. Pallmeyer
This Document Relates to All Cases)

PROPOSED CASE MANAGEMENT ORDER NO. 3: DIRECT FILING

The Joint Panel for Multidistrict Litigation has consolidated, for pretrial purposes, a number of lawsuits concerning preterm-infant nutrition products manufactured by Defendants Abbott Laboratories and Abbott Laboratories, Inc. (“Abbott”), and Defendants Mead Johnson & Company, LLC and Mead Johnson Nutrition Company (“Mead Johnson”). In Case Management Order No. 1, the court instructed counsel to directly file such cases in the Northern District of Illinois only if properly venued here [34]. The parties disagree on the appropriateness of direct filing in this MDL but have not further addressed the issue.

Having given the matter further thought, however, the court is no longer certain that direct filing is inconsistent with appropriate administration of this case. As commentators have recognized, direct filing may minimize the time and costs associated with Plaintiffs’ filing in a transferor court and then awaiting transfer to this court by the MDL Panel. See *Looper v. Cook Inc.*, 20 F.4th 387, 390–91 (7th Cir. 2021) (“[I]t has become increasingly more time-consuming and expensive for an individual case to find its way into a transferee court.” (quoting Eldon E. Fallon et. al., *Bellwether Trials in Multidistrict Litigation*, 82 Tul. L. Rev. 2323, 2355 (2008)); Andrew D. Bradt, *The Shortest Distance: Direct Filing and Choice of Law in Multidistrict Litigation*, 88 Notre Dame L. Rev. 759, 763 (2012) (“[Direct filing] achieves significant efficiencies for all parties and the system: it reduces costs and delays, eliminates the administrative burdens of transfer on both the parties and the courts, and it provides the MDL court the ability to try to settle

the cases without ever having the obligation to remand them to their home districts.”). The court’s earlier resistance to direct filing was born of concern that direct filing might generate uncertainty and confusion regarding “personal jurisdiction, venue, and choice of law” issues in any individual case. *Looper*, 20 F.4th at 391. The court recognizes, however, that it can take steps to ensure clarity on these matters. See *id.* at 399 (urging “transferee judges to use written orders to ensure clear consent from parties about how they will manage choice-of-law, personal jurisdiction, and venue issues in directly filed cases”). To that end, the court has drafted such an order; before issuing it, the court invites counsel’s review. Recognizing that time is short, the court nevertheless asks counsel to review the proposed order and be prepared to express their concerns and objections, if any, at the status hearing scheduled for June 30, 2022 at 10:00 a.m., to take place in person at the United States District Court, 219 South Dearborn, Chicago, IL 60604. At that time, the court will consider appropriate next steps.

TEXT OF PROPOSED CASE MANAGEMENT ORDER NO. 3

I. Scope

This order applies to all cases now pending, as well as to any cases later filed in, transferred to, or removed to this court and treated as related cases to *In Re: Abbott Laboratories, et al., Preterm Infant Nutrition Products Liability Litigation*, MDL No. 3026, Master Docket No. 22 C 71 (N.D. Ill.). Cases directly filed in the Northern District of Illinois are referred to as “directly filed cases.”

II. Directly Filed Cases Prior to Entry of this Order

1. Abbott-Only Cases: If the case was filed against Abbott, and no non-Abbott-related Defendants are named, it shall be treated as if originally filed in the Northern District of Illinois, for all pretrial and trial proceedings. In other words, Plaintiffs and Abbott shall be precluded from seeking remand of these cases to a venue or jurisdiction outside of the Northern District of Illinois, or making any other venue, convenience, or personal jurisdiction objections.

2. Other Abbott Cases: If the case names Abbott and any non-Abbott or non-Mead Johnson-related Defendants, the court will assume the case is properly venued in the Northern District of Illinois, unless the non-Abbott/non-Mead Johnson Defendant makes a venue-related objection. If there are no objections, the case shall be treated as if originally filed in the Northern District of Illinois, for all pretrial and trial proceedings.

3. Mead Johnson Cases: If the case names any Mead Johnson-related Defendants (on their own or together with any other co-Defendants), it shall be *conditionally* treated as if originally filed in the Northern District of Illinois. At the parties' request, the court will rule on Mead Johnson's objections to personal jurisdiction and venue in the Northern District of Illinois.

III. Directly Filed Cases After Entry of this Order

As of the issuance of this order, Plaintiffs are permitted to directly file cases in the Northern District of Illinois, even if not properly venued here. This direct filing is subject to the following rules:

1. Designated Home State Forum: When directly filing a new case, Plaintiffs are required to designate a home state forum ("designated forum") on the face of the complaint. Every motion filed by Plaintiffs must also identify this designated forum. The designated forum is the United States District Court where Plaintiffs would have filed their suit (but for this direct filing order) and to which the case will be remanded once these MDL proceedings are complete. Personal jurisdiction and venue must be proper in the designated forum. The court will treat directly filed cases as though they were originally filed in the designated forum, and then transferred to this court through normal MDL tag-along proceedings.

2. Choice of Law: The choice-of-law rules of the designated home state forum will apply to all directly-filed cases.

3. Objections: Consent to direct filing does not constitute a waiver of any objections to personal jurisdiction, venue, forum convenience, or *Lexecon*. Rather, the direct-filing protocol is designed to allow the parties to reserve any arguments regarding these issues until this court

recommends remand of such cases by the JPML. When the court makes such a recommendation, it will also resolve any dispute concerning the federal district to which the case shall be remanded. The parties shall work reasonably to resolve such disputes prior to remand and shall submit any unresolved disputes to this court for binding determination, subject to appeal to the appropriate federal circuit court of appeals when the MDL court's determination becomes final and appealable. Should any Defendant named and served in any directly-filed case have a good faith belief that they are not a proper defendant in any federal district court in the United States, counsel for that defendant shall promptly meet-and-confer with the attorney who filed the matter and a member of Plaintiffs' Leadership Counsel on how best to present the issue for court resolution.

4. Possible Agreed Trials: In addition to the agreed waivers set forth above, upon the express stipulation of all parties, the parties may agree, at a future date, to hold in the Northern District of Illinois the trial of any case over which there is federal subject matter jurisdiction.

5. Attorney Admission: In accordance with Case Management Order No. 1, any attorney admitted to practice and in good standing in any United States District Court is admitted *pro hac vice* in this litigation. Association of co-counsel for purposes of litigation, including direct filing, is not required.

6. Attorney Filing: Prior to any Plaintiff's attorney filing a complaint in the United States District Court for the Northern District of Illinois or directly in the MDL Proceedings pursuant to this order, that attorney must register for and/or have a Northern District of Illinois CM/ECF log in name and password.

7. Caption: Any complaint that is directly filed in this MDL shall bear the following caption:

