

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GAIL ZEEVI,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	NO. 99-CV-20277
AMERICAN HOME PRODUCTS	:	
CORPORATION, WYETH-AYERST	:	
LABORATORIES COMPANY,	:	
WYETH-AYERST LABORATORIES	:	
DIVISION OF AMERICAN HOME	:	
PRODUCTS CORPORATION, WYETH	:	
LABORATORIES, INC., and A.H.	:	
ROBINS COMPANY, INC.,	:	
Defendants.	:	

**MEMORANDUM-ORDER**

**Green, S.J.**

**January \_\_\_\_\_, 2002**

Presently before the Court is Defendants' Motion to Transfer Pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, Defendants' motion will be granted, and this case will be transferred to the United States District Court for the Eastern District of Louisiana.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On or about December 21, 1995, Plaintiff Gail Zeevi, a citizen and resident of Louisiana, was prescribed and began to take Fenfluramine (also known by the brand name "Pondimin"), an FDA approved diet drug manufactured and sold by Defendants American Home Products Corporation, Wyeth-Ayerst Laboratories Company, Wyeth-Ayerst Laboratories Division of America Home Products Corporation, and Wyeth Laboratories (collectively, "Defendants")<sup>1</sup> for the treatment of obesity.

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<sup>1</sup>On August 3, 1998, A.H. Robbins Company, Inc. was merged into American Home Products Corporation and ceased to exist as a separate entity. (See Defs.' Mot. to Transfer Venue at 1.)

In 1997, the medical community began to publish literature as to the possible connection between Pondimin and other such diet drugs and left-sided heart valve problems in some users, which resulted in many lawsuits being leveled at Defendants. As a result of the large volume of diet drug cases being filed in federal courts around the country, the Judicial Panel on Multidistrict Litigation (“MDL”) established an MDL proceeding in this district to which all of the diet drug cases are transferred for discovery and other pretrial purposes.<sup>2</sup>

On or about July 7, 1999, Plaintiff, who claims to have suffered personal injuries and subsequent medical costs and expenses as a direct and proximate result of her ingestion of Pondimin, filed a Complaint in this district, citing this Court’s original jurisdiction under 28 U.S.C. § 1332. She asserted claims for negligence, strict product liability, breach of express and implied warranty, negligence per se, and intentional and negligent misrepresentation. On or about August 23, 1999, Defendants answered Plaintiff’s Complaint with affirmative defenses. Pursuant to 28 U.S.C. § 1404(a), Defendants seek to have the case transferred to the Eastern District of Louisiana, arguing that the Eastern District of Louisiana is the most convenient and economical place to try the above-captioned case.

## **II. DISCUSSION**

Title 28 U.S.C. § 1404(a) provides: “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” The party moving for the transfer of venue bears the burden of justifying the transfer. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). Further, the alternative venue requested by the moving party must be a proper one. See Hoffman

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<sup>2</sup>The multidistrict litigation (“MDL”) proceeding is In re: Diet Drugs Products Liability Litigation, MDL Docket No. 1203.

v. Blaski, 363 U.S. 335, 344 (1960). In ruling on §1404(a) motions, courts “consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum.” Jumara, 55 F.3d at 879 (citation omitted). Although the following factors are not exclusive, courts frequently consider “private interest factors” such as the plaintiff’s choice of forum as evidenced by the original filing, where the claim arose, the convenience of the parties and witnesses, and the location of the evidence. See id. Courts also consider “public interest factors” such as choice of law considerations, holding expeditious and inexpensive trials, congestion of court dockets, and the interest of the forum state and its residents in the litigation. See id. at 879-80.

In analyzing a motion for transfer of venue, the “plaintiff’s choice of . . . forum is a paramount consideration . . . and that choice should not be lightly disturbed.” See Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970), *cert. denied*, 401 U.S. 910 (1971) (quotation omitted). However, a plaintiff’s “choice [of forum] receives less weight where none of the operative facts occurred in the selected forum.” Extraordinary Properties, Inc. v. Nationwide Mutual Ins. Co., No. CIV.A.99-4305, 2000 WL 66157, at \*2 (E.D. Pa. Jan. 24, 2000). That deference is further reduced “where the lawsuit is initiated outside the forum in which the Plaintiff is a resident.” Lifescan Inc. v. Polymer Technology International Corp., No. CIV.A. 93-6983, 1994 WL 161375, at \*2 (E.D. Pa. Apr. 28, 1994).

In the present matter, Defendants argue that this action should be transferred to the United States District Court for the Eastern District of Louisiana. To date, Plaintiff has not responded to Defendants’ motion. Nevertheless, pursuant to 28 U.S.C. § 1391(b), venue is proper in the Eastern District of Louisiana. First, the Eastern District of Louisiana clearly has subject matter jurisdiction over the action. (See 28 U.S.C. § 1332(a); see also Pl.’s Compl.)

Second, Defendants, companies who knew their products would be sold in Louisiana, are subject to personal jurisdiction there and thus reside in Louisiana for venue purposes. Finally, a substantial part of events giving rise to Plaintiff's claim occurred in Louisiana. Therefore, because the requirements of 28 U.S.C. § 1391(b) are met, I conclude that venue is proper in the Eastern District of Louisiana. The only remaining question is whether, in the interests of justice, the case should be transferred.

Plaintiff chose to file her action in the Eastern District of Pennsylvania and although Plaintiff's choice of forum is a factor to be considered by the Court, it is clearly outweighed by the other operative facts of the case. Plaintiff resides in Louisiana and Plaintiff's alleged injuries were sustained in Louisiana. Almost all of the evidence, witnesses and testifying experts are located in Louisiana.<sup>3</sup> Notably, Plaintiff's treating physicians, who are essential witnesses to the litigation, are more conveniently called to testify in Louisiana than Pennsylvania. In addition, the location of the evidence and the witnesses in Louisiana makes it apparent that litigating the case there will be more convenient and less expensive for the parties. Finally, because all of the operative events giving rise to Plaintiff's alleged injuries occurred in Louisiana, the citizens of Louisiana have more of an interest in deciding the case than the citizens of Pennsylvania.

### **III. CONCLUSION**

Weighing the interests enumerated in 28 U.S.C. § 1404(a), I conclude that for the convenience of the parties and witnesses, and in the interest of justice, this case should be transferred to the Eastern District of Louisiana. An appropriate order follows.

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<sup>3</sup>The only defense witnesses with information relevant to Plaintiff's claims who are unavailable in Louisiana are those employee witnesses who have already been deposed in the MDL proceeding. Nevertheless, their testimony may be used in all MDL trials, subject to the Federal Rules of Evidence.

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DIVISION OF AMERICAN HOME	:	
PRODUCTS CORPORATION, WYETH	:	
LABORATORIES, INC., and A.H.	:	
ROBINS COMPANY, INC.	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of January, 2002, upon consideration of Defendants’

Motion to Transfer Pursuant to 28 U.S.C. § 1404(a), **IT IS HEREBY ORDERED** that:

1. Defendants’ motion is **GRANTED**; and
2. The case is to be **TRANSFERRED** to the **UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA**.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.