



including those in the Sixth Circuit, “frequently grant stays pending a decision by the MDL Panel regarding whether to transfer a case.” *Dowler v. Med. Shoppe*, No. 2:07 CV 848, 2007 WL 2907519, at \*2 (S.D. Ohio Oct. 3, 2007)) (quoting *Good v. Prudential Ins. Co. of Am.*, 5 F.Supp.2d 804, 809 (N.D.Cal.1998)); *see also Ohio v. U.S. Env. Prot. Agency*, No. 2:15-cv-2467, 2016 WL 525480, at \*2 (S.D. Ohio Feb. 8, 2016) (noting that the Court had stayed the case pending MDL Panel’s decision on motion to transfer). When deciding whether to grant a stay pending a motion to transfer, courts in the Sixth Circuit have considered: 1) the need for a stay, 2) the balance of potential hardship to the parties and the public, and 3) the promotion of judicial economy. *Dowler*, 2007 WL 2907519, at \*2.

All of these factors weigh in favor of granting a stay. First, a stay is needed “to eliminate duplicative discovery, prevent inconsistent or repetitive pretrial rulings,” as well as “conserve the resources of the parties, their counsel and the judiciary.” *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liab. Litig.*, 990 F. Supp. 834, 836 (J.P.M.L. 1998). All of these are goals of multidistrict litigation. *See id.* Second, neither the plaintiff nor the public would be significantly prejudiced by a stay, as there is no evidence that staying the case for a short period would cause any party or stakeholder to suffer additional harm. Finally, granting a stay would promote judicial economy by ensuring multiple courts do not rule on the same jurisdictional question that is at issue in this case. When multiple courts face the same jurisdictional issue, courts have said that the “best course” is to stay the action and allow the transferee court to “resolve the jurisdictional question.” *Johnson v. AMR*

*Corp.*, No. 95 C 7659, 1996 WL 164415, at \*4 (N.D. Ill. Apr. 3, 1996) (declining to rule on jurisdictional issues until MDL panel made final transfer decision).<sup>1</sup>

In response, the plaintiff identified two main ways in which she said she would be prejudiced by the Court staying this case. First, she points out that fully briefed motions to dismiss are currently pending before this Court and that “settling the jurisdictional issue now would save the parties the added expense, effort, and delay of additional briefing before the MDL Panel.” R. 41 at 7. But even if the Court denied the stay, the MDL Panel may still grant the motion to transfer. If this happens, the plaintiff would likely have to submit additional briefing to the MDL Panel. Such an outcome would impose upon the plaintiff the added “expense, effort, and delay” that she so fears. Thus, whether or not the plaintiff faces the “expense, effort, and delay” of additional briefing does not depend upon whether this Court grants the stay, but instead upon whether the MDL Panel grants the motion to transfer. The plaintiff may raise this issue with the MDL Panel when that court holds oral argument on the motion to transfer. But because the plaintiff’s alleged prejudice arises from transfer—not from staying this litigation—the plaintiff has not shown that she would be prejudiced by a stay. To the contrary, if the MDL Panel does grant the motion to transfer, the plaintiff’s resources overall would be conserved by staying the litigation in this Court until the MDL Panel’s decision. This is because the plaintiff would not need to continue expending resources litigating this case only to have to replicate all of these expenditures if the case is transferred.

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<sup>1</sup> The plaintiff also urged the Court to consider the merits of the motion to transfer when deciding whether a stay was warranted. R. 41 at 8–12. Although the Court recognizes that other courts have considered this factor when deciding whether to grant a motion to stay, *see Bertram v. Fed. Express Corp.*, No. CIV.A.05 28 C, 2006 WL 3388473, at \*2 (W.D. Ky. Nov. 20, 2006), the Court believes that the merits of the motion to transfer are best considered by the MDL Panel. The Court declines to pre-judge the merits here.

Thus, staying this case best guards against the plaintiff's concerns and ensures that she is not prejudiced by transferring this case.

Second, the plaintiff says that she would be prejudiced by the delay created by a stay. The Court agrees that "justice delayed is justice denied." Accordingly, the Court will stay this action only temporarily. This temporary stay will give the MDL Panel a chance to rule on the motion to transfer without significantly delaying this litigation and prejudicing the plaintiff. If the MDL Panel has not ruled on the motion to transfer by July 1, 2016, the Court will lift the stay and rule on the underlying motions to dismiss by July 29, 2016.

During the call, the plaintiff informed the Court that she had requested that the MDL Panel, if it chooses to consolidate this case and the related cases, transfer the multidistrict litigation to the Eastern District of Kentucky. The undersigned notes that he is happy to oversee the consolidated litigation if the MDL Panel so chooses.

Accordingly, it is **ORDERED** that:

- (1) The defendants' joint motion to stay, R. 40, is **GRANTED IN PART**.
- (2) This case is **STAYED** until **Friday, July 1, 2016**.
- (3) The parties **SHALL FILE** a joint status report updating the Court on the status of the motion to transfer, *see* R. 39-1, by **Wednesday, June 29, 2016**. This report should inform the Court whether the MDL Panel has granted the motion to transfer, denied the motion to transfer, or taken no action on the motion to transfer.
- (4) If the MDL Panel does not act on the motion to transfer by **July 1, 2016**, the stay will automatically lift on **Friday, July 1, 2016**. In this case, the Court will rule on the motions to dismiss by **Friday, July 29, 2016**.

- (5) If the MDL Panel grants or denies the motion to transfer prior to July 1, 2016, the parties **SHALL INFORM** the Court of this action. If the MDL Panel denies the motion to transfer, the Court will rule on the motions to dismiss within **30 days** of receiving notice of the MDL Panel's decision from the parties.
- (6) If the parties would like to schedule oral argument on the underlying motions to dismiss, they **SHALL SUBMIT** a mutually agreeable date to the Court. The parties' chosen date must be **within 14 days** of **July 1, 2016**.

This the 21st day of April, 2016.



Signed By:

Amul R. Thapar AT

United States District Judge

TIC: 15 minutes, Covington