UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NEURONTIN ANTITRUST LITIGATION

Travelers Indemnity Company, et al. v. Pfizer Inc., et al.)
D. Connecticut, C.A. No. 3:12-01059) MDL No. 1479

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in this action (*Travelers*) move to vacate our order conditionally transferring the action to the District of New Jersey for inclusion in MDL No. 1479.[1] Responding defendants Pfizer Inc. and Warner-Lambert Company LLC (collectively Pfizer) oppose the motion.

After considering all argument of counsel, and following consultation with the transferee judge, the Honorable Faith S. Hochberg, we conclude that inclusion of *Travelers* in the MDL would not necessarily serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. *See* 28 U.S.C. § 1407(a). In reaching that conclusion, we agree that the action does appear to share, to some extent, certain factual issues with those in the MDL,[2] particularly with respect to allegations that defendants acted and/or conspired to keep generic alternatives to Neurontin off the market, resulting in consumers paying supra-competitive prices for the drug. We ordered centralization in this docket in 2002, however, and have not transferred an action to the MDL since December of that year. Pretrial proceedings in the centralized proceedings are, by any measure, at any advanced stage. Discovery has been completed; summary judgment motions are pending; and *Daubert* motions are also on file. If we were to transfer this only recently-commenced action, its addition to the ongoing proceedings would almost certainly have an adverse impact on the progress of this very mature litigation. *See In re: Checking Account Overdraft Litig.*,

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[1] Plaintiffs are The Travelers Indemnity Company, Travelers Casualty and Surety Company, St. Paul Fire and Marine Insurance Company, and Standard Fire Insurance Company, as well as the various property casualty affiliates and subsidiaries of those companies.

[2] The centralized actions involve allegations that Pfizer "engaged in an overarching anti-competitive scheme to acquire and maintain monopoly power in the market for gabapentin products in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2." *See In re Neurontin Antitrust Litig.*, 801 F. Supp. 2d 304, 305 (D.N.J. 2011). Pfizer is alleged to have carried out this scheme by engaging in fraudulent and deceptive acts before the Food and Drug Administration (*e.g.*, improperly listing certain patents in the Orange Book), manipulating the patent approval process, prosecuting sham patent lawsuits, and improperly promoting Neurontin in an effort to persuade doctors to prescribe it for various non-approved uses. *See id.* n.1. Gabapentin is the generic name of Neurontin. In 1993, Pfizer obtained FDA approval to market gabapentin for use in the treatment of epilepsy. *See Warner Lambert Co. v. Apotex Corp.*, 316 F.3d 1348, 1352 (Fed. Cir. 2003).

818 F. Supp. 2d 1373, 1373-74 (J.P.M.L. 2011) ("[T]he Panel must always consider the impact that transfer of [a new tag-along] action could have on the cases already in the MDL.").

While we conclude that Section 1407 transfer of *Travelers* is not warranted, we observe that the parties therein should be able to avail themselves of the discovery already obtained in the MDL (subject, of course, to the same conditions, if any, as those imposed on parties in the MDL). This should help ensure that duplicative discovery is largely or completely eliminated. In addition, the presiding judge in *Travelers*, the Honorable Vanessa L. Bryant, likely will find useful guidance in Judge Hochberg's many thoughtful and substantive pretrial rulings. Thus, even absent transfer, many benefits of the MDL are available to expedite resolution of this action.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-2" is vacated insofar as it relates to this action.

PANEL ON MULTIDISTRICT LITIGATION

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