

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: NEURONTIN MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 1629

ORDER DENYING TRANSFER

Before the Panel: Pursuant to 28 U.S.C. § 1407(c), plaintiffs in the action (*Travelers*) listed on the attached Schedule A move to transfer the action to the District of Massachusetts for inclusion in MDL No. 1629. Defendants Pfizer Inc. and Warner-Lambert Company LLC (collectively Pfizer) oppose the motion.

I.

In October 2012, Pfizer notified the Panel that *Travelers* was a potential tag-along in both this docket (*i.e.*, MDL No. 1629) and MDL No. 1479, In re: Neurontin Antitrust Litigation. This docket, which is pending in the District of Massachusetts before the Honorable Patti B. Saris, involves, *inter alia*, allegations that Pfizer “engaged in the illegal promotion and sale of the drug Neurontin for ‘off-label’ use,” in violation of the federal RICO statute and state law.¹ See *In re: Neurontin Mktg. & Sales Practices Litig.*, 342 F. Supp. 2d 1350, 1351 (J.P.M.L. 2004). MDL No. 1479, which is pending in the District of New Jersey before the Honorable Faith S. Hochberg, involves allegations that Pfizer violated federal antitrust law by engaging in a scheme to acquire and maintain monopoly power in the market for gabapentin¹ products. See *In re Neurontin Antitrust Litig.*, 801 F. Supp. 2d 304, 305 & n.1 (D.N.J. 2011).

A review of the *Traveler* plaintiffs’ initial, and still operative, complaint, revealed that the action shared (and shares) factual issues with both MDL No. 1629 and MDL No. 1479. After considering the status of the two dockets, however, we opted to place the action on a conditional transfer order (CTO) for transfer to MDL No. 1479, rather than MDL No. 1629. After the CTO issued, plaintiffs filed a motion to vacate, arguing that the action should remain in the District of Connecticut. Plaintiffs contended, *inter alia*, that pretrial proceedings in MDL No. 1479 were essentially complete, and that alternatives to transfer were more appropriate.² Plaintiffs further contended that *Travelers* “more

¹ The MDL also encompasses actions involving allegations that the allegedly improper promotion of off-label uses for Neurontin contributed to the personal injuries that the subject plaintiffs purportedly sustained as a result of taking the drug.

¹ “Gabapentin” is the generic name for Neurontin.

² Plaintiffs argued, for example, that at a recent Rule 26(f) conference, counsel for all parties had “expressed a willingness to cooperate to avoid unnecessary duplication of discovery already conducted”

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substantially implicate[d]” the subject matter of MDL No. 1629 – although they did not, at that time, argue in favor of the action’s transfer to that MDL.³ Pfizer, on the other hand, supported transfer of the action to MDL No. 1479. Pfizer argued, *inter alia*, that pretrial proceedings in the MDL were not so advanced such that transfer would not inure to plaintiffs’ benefit (including facilitating their access to the substantial discovery produced in the MDL), and that plaintiffs’ proposed alternatives to transfer would not afford Pfizer sufficient protection from duplicative discovery, motion practice, and other pretrial proceedings.

After careful consideration of the parties’ arguments, we granted plaintiffs’ motion to vacate the CTO. We agreed with plaintiffs that pretrial proceedings in MDL No. 1479 were “at an advanced stage,” and thus that transfer of *Travelers* “would almost certainly have an adverse impact on the progress” of the centralized proceedings. *See* MDL No. 1479, Order Vacating Conditional Transfer Order at 1-2 (J.P.M.L. Feb. 12, 2013) (ECF No. 62). We observed that even absent transfer, the *Travelers* plaintiffs “should be able to avail themselves of the discovery already obtained in the MDL,” and that Judge Vanessa L. Bryant, the judge who presides over *Travelers*, “likely w[ould] find useful guidance in Judge Hochberg’s many thoughtful and substantive pretrial rulings.” *Id.* at 2.

II.

In now moving to transfer their action to MDL No. 1629, the *Travelers* plaintiffs explain that they currently are seeking, via a proposed amended complaint, to drop their antitrust claims and focus on – and expand – their sales and marketing claims. If leave to amend is granted, plaintiffs contend that their claims then will be “virtually identical” to those in the sales and marketing cases in the MDL. Plaintiffs further argue that the current procedural posture of the latter cases now renders transfer of *Travelers* appropriate. In particular, plaintiffs cite three April 2014 decisions by the United States Court of Appeals for the First Circuit, two of which (*Aetna* and *Harden*) resulted in remands to the transferee court for further proceedings,⁴ and the third of which affirmed the transferee court’s judgment entered on verdicts in favor of the subject plaintiff.⁵

in both MDL Nos. 1479 and 1629, and that if the action was not transferred, the District of Connecticut court could encourage best practices to save time and expense, such as precluding duplicative discovery requests and directing parties to review and utilize discovery conducted in other litigation. *See* MDL No. 1479, Pls.’ Br. in Supp. of Mot. to Vacate, at 18-19 (J.P.M.L. Dec. 18, 2012) (ECF No. 47).

³ Indeed, plaintiffs asserted that the District of Connecticut court was “fully capable [of] understanding both [MDL No. 1479] and [MDL No. 1629] to [e]ffect the just and efficient conduct of this action.” *See* MDL No. 1479, Pls.’ Reply to Defs.’ Opp. to Pls.’ Mot. to Vacate, at 7 (J.P.M.L. Jan. 15, 2013) (ECF No. 61).

⁴ *In re: Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 51 (1st Cir. 2013); and *In re: Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 60 (1st Cir. 2013).

⁵ *In re: Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21 (1st Cir. 2013).

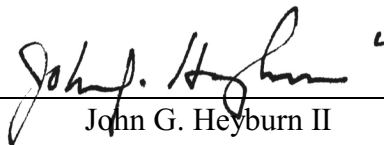
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After careful consideration of the record and the parties' arguments, we are not persuaded that transfer of *Travelers* is warranted. Plaintiffs do not cite a single instance – and we are aware of none – in which we have declined to transfer an action to one MDL, but then, more than a year later, ordered transfer of that same action to another MDL, much less an MDL as mature as this one. Plaintiffs' argument with respect to the change in the MDL's procedural posture is unconvincing. Of the two cases remanded by the First Circuit for further proceedings, one (*Aetna*) has since been dismissed, and in the other (*Harden*), the parties have reached a settlement for which preliminary approval has been sought. The record thus indicates that this MDL is likely to be concluded shortly.

We also note that the *Travelers* action itself is at an advanced stage. It has been pending since July 2012, and has a discovery cutoff of September 30, 2014, and a trial setting of January 6, 2015. Judge Bryant recently appointed a special master to oversee discovery and related matters in the action, and Pfizer represents that it already has completed its document production (more than thirteen million pages) in the case.

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407(c), for transfer of this action is denied.

PANEL ON MULTIDISTRICT LITIGATION



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**IN RE: NEURONTIN MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 1629

SCHEDULE A

District of Connecticut

TRAVELERS INDEMNITY COMPANY, ET AL. v. PFIZER, INC., ET AL.,
C.A. No. 3:12-01059