UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ACTOS PRODUCTS LIABILITY LITIGATION

Ouida H. Ward, et al. v. Eli Lilly and Company, et al.)
S.D. Indiana, C.A. No. 1:12-00513) MDL No. 2299

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in this action (*Ward*) move to vacate our order conditionally transferring the action to the Western District of Louisiana for inclusion in MDL No. 2299. Responding defendants oppose the motion.[1]

In opposing transfer, the *Ward* plaintiffs cite their motion for remand to state court, which is currently pending before the Southern District of Indiana court. As we have frequently held, however, the pendency of such a motion is generally not a sufficient reason to warrant vacating a conditional transfer order. Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the putative transferor court. Between the date a remand motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon a remand motion generally has adequate time in which to do so. Plaintiffs can present their pending motion to the transferee judge. *See*, *e.g.*, *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Ins. Co. of America Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

After considering all argument of counsel, we find that the *Ward* action involves common questions of fact with actions previously transferred to MDL No. 2299, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our original order directing centralization. In that order, we held that the Western District of Louisiana was an appropriate Section 1407 forum for actions involving "claims arising from the use of Actos, a prescription medication approved for use in the treatment of type 2 diabetes." *See In re: Actos Prods. Liab. Litig.*, 840 F. Supp. 2d 1356, 1356 (J.P.M.L. 2011). Plaintiffs in the previously-centralized actions allege that the use of Actos results in "an increased risk of developing bladder cancer," and that defendants "concealed their knowledge of this risk and failed to provide adequate warnings to consumers and the health care community." *Id.* Here, the *Ward* plaintiffs similarly allege that defendants "concealed and continue to conceal their knowledge of Actos' unreasonably dangerous

[1] These defendants are Takeda Pharmaceuticals America, Inc.; Takeda Pharmaceuticals U.S.A., Inc.; Takeda Pharmaceuticals Company Limited; Takeda Global Research & Development Center, Inc.; and Eli Lilly & Company.

risks," and "failed to adequately inform consumers and the prescribing medical community about the risk of bladder cancer associated with the use of Actos." *Ward* Complaint ¶ 2. The action falls squarely within the ambit of MDL No. 2299.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Western District of Louisiana and, with the consent of that court, assigned to the Honorable Rebecca F. Doherty for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

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