UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: PROPECIA (FINASTERIDE)
PRODUCTS LIABILITY LITIGATION MDL No. 2331

TRANSFER ORDER

Before the Panel: Defendants Merck & Co., Inc., and Merck, Sharp & Dohme Corp. (collectively Merck) move under 28 U.S.C. 1407(c) to transfer the Southern District of California action (*Pfaff)* listed on Schedule A to MDL No. 2331. The *Pfaff* plaintiffs oppose the motion.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2331, and that transfer under 28 U.S.C. § 1407 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 order directing centralization, in which we held that the Eastern District of New York was an appropriate transferee forum for actions sharing allegations that use of finasteride, the active ingredient in Propecia and Proscar, causes persistent sexual dysfunction in a subset of male users, sometimes even after discontinuation of use of the drug. *See In re: Propecia (Finasteride)Prods. Liab. Litig.,* 856 F. Supp. 2d 1334, 1335 (J.P.M.L. 2012).

Plaintiffs oppose transfer, arguing that their allegations of an increased risk of depression and suicidality are sufficiently unique to warrant exclusion from the MDL proceedings. Plaintiffs characterize their allegations of sexual dysfunction caused by finasteride use as background information and disclaim any damages for sexual dysfunction.

Plaintiffs' decedent in this action allegedly experienced two of the common injuries that MDL plaintiffs have experienced—persistent sexual dysfunction and depression—and one rarely alleged side-effect, suicidal ideation. Discovery about all three alleged symptoms, however, appears to be intertwined, and likely will overlap with the MDL discovery. Plaintiffs in *Pfaff* can benefit from the discovery that has been or will be conducted in the MDL proceedings, and (if necessary) the transferee judge can accommodate any unique discovery needs presented by *Pfaff* and any of the other cases in the

MDL proceedings that include allegations of suicidal ideation.[1] Thus, we are of the opinion that the benefits of transfer outweigh any disadvantages.

IT IS THEREFORE ORDERED that this action is transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable John Gleeson for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

[1] *Andrew I. Migliazzao v. Merck & Co., Inc. et al.*, E.D. New York, C.A. No. 1:13-cv-1840; *Fotios Briannis v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:12-cv-6192; *Thomas DeStefano v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:13-cv-3686; *Christian Kaempfen, et al. v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:14-cv-3256; *Darryl Schneider, et al. v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:13-cv-442; *Billy Thanos v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:14-cv-2053; *David R. Pawloski, et al. v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:14-cv-4038.

IN RE: PROPECIA (FINASTERIDE)
PRODUCTS LIABILITY LITIGATION MDL No. 2331

SCHEDULE A

Southern District of California

PFAFF, ET AL. v. MERCK & CO., INC., ET AL., C.A. No. 3:15-509