

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: INCRETIN-BASED THERAPIES
PRODUCTS LIABILITY LITIGATION**

MDL No. 2452

TRANSFER ORDER

Before the Panel: Plaintiff in a District of New Jersey action (*Estate of Janice McDaniel*) moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action, which is listed on the attached Schedule A, to MDL No. 2452. Defendant Amylin Pharmaceuticals, LLC opposes 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. 2452, 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 that order, we held that the Southern District of California was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that the use of one or more of four anti-diabetic incretin-based medications – Janumet (sitagliptin combined with metformin), Januvia (sitagliptin), Byetta (exenatide) and Victoza (liraglutide) – caused plaintiffs or their decedent to develop pancreatic cancer. *See In re: Incretin-Based Therapies Products Liability Litigation*, 968 F. Supp. 2d 1345 (J.P.M.L., 2013). This action involves allegations that ingestion of certain incretin-based therapies—in this instance, Byetta, Bydureon (an extended release version of Byetta) and Victoza—caused plaintiff's wife to develop pancreatic cancer, from which she died. This action clearly falls within the MDL's ambit.

Plaintiff does not dispute that his action shares questions of fact concerning three incretin mimetic drugs with actions already pending in MDL No. 2452. Plaintiff instead bases his arguments against transfer primarily on the pendency of his motion to remand the action to state court. Plaintiff can present this motion for remand to the transferee judge.¹ *See, e.g., In re: Ivy*, 901 F.2d 7, 9 (2nd Cir. 1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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IT IS THEREFORE ORDERED that this action is transferred to the Southern District of California and, with the consent of that court, assigned to the Honorable Anthony J. Battaglia for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

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

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

**IN RE: INCRETIN-BASED THERAPIES
PRODUCTS LIABILITY LITIGATION**

MDL No. 2452

SCHEDULE A

District of New Jersey

ESTATE OF JANICE MCDANIEL, ET AL. v. AMYLIN PHARMACEUTICALS,
LLC, ET AL., C.A. No. 1:15-8310