

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2452

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in the action (*Malik*) listed on Schedule A moves to vacate our order that conditionally transferred *Malik* to MDL No. 2452. Responding defendants¹ oppose the motion to vacate.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2452, 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 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 Byetta and/or Januvia caused decedent’s pancreatic cancer and clearly falls within the MDL’s ambit.

Plaintiffs do not significantly dispute that this action shares questions of fact with actions pending in MDL No. 2452. Plaintiffs instead base their arguments against transfer primarily on the pendency of their motion to remand the action to state court.² Plaintiffs can present the motion for remand to the transferee judge. *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).

We also will deny defendants’ alternative request to separate and remand medical malpractice claims against the decedent’s healthcare providers. Granting this request would prejudice the substantive

* Judge Ellen Segal Huvelle did not participate in the decision of this matter.

¹ Amylin Pharmaceuticals, LLC, Eli Lilly and Co., and Merck Sharp & Dohme Corp.

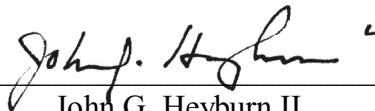
² Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon the remand motion generally has adequate time in which to do so.

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issues pending in *Malik* – namely, plaintiffs’ motion to remand and defendants’ motion to sever the medical malpractice claims. The transferee judge, whenever he deems appropriate, may recommend Section 1407 remand of *Malik* or any claims in *Malik* in advance of other actions or claims. *See In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1347 (J.P.M.L. 2007).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, 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



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

MDL No. 2452

SCHEDULE A

Southern District of New York

MALIK, ET AL. v. BUATTI, ET AL., C.A. No. 1:14-03013