

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ZOFTRAN (ONDANSETRON)
PRODUCTS LIABILITY LITIGATION

MDL No. 2657

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: *Pro se* plaintiff, Julie Burnett, in the action listed on Schedule A (*Burnett*) moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2657. Defendants Glaxosmithkline LLC (GSK), McKesson Corp. (McKesson), and Target Corp. (Target) oppose the motion to vacate.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2657, but that transfer under 28 U.S.C. § 1407 will not serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation at this time. Plaintiff Burnett does not dispute that the action shares questions of fact and law with the actions in MDL No. 2657. Like many of the already-centralized actions, *Burnett* involves factual questions arising from allegations that Zofran and its generic equivalent cause birth defects in children when the drug is ingested by pregnant women. *See In re: Zofran (Ondansetron) Prods. Liab. Litig.*, 138 F. Supp. 3d 1381 (J.P.M.L. 2015).

In support of the motion to vacate, plaintiff Burnett argues she filed an unopposed motion to dismiss without prejudice in the transferor court, and the Panel lacks jurisdiction over the action. Since plaintiff Burnett filed the motion to vacate before the Panel, all original plaintiffs to the action and defendants have stipulated to dismiss the action in the District of Minnesota. All plaintiffs later withdrew that stipulation and then sought to appeal part of the stipulation to the Eighth Circuit, arguing that the court “should have been satisfied” with a previous voluntary dismissal filed by Ms. Burnett, who is the only plaintiff named in an amended complaint. A subsequent brief submitted by plaintiff Burnett to the Panel suggests that she still wishes to dismiss her case. Thus, it appears that dismissal may take place in short order without the need for Section 1407 transfer. Therefore, we will grant the motion to vacate, but if *Burnett* is not dismissed and the case proceeds in the District of Minnesota, the parties are directed to notify the Panel.

IT IS THEREFORE ORDERED that the Panel’s conditional transfer order designated as “CTO-24” is vacated insofar as it relates to this action.

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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: ZOFRAN (ONDANSETRON)
PRODUCTS LIABILITY LITIGATION**

MDL No. 2657

SCHEDULE A

District of Minnesota

BURNETT v. GLAXOSMITHKLINE, LLC, ET AL., C.A. No. 0:16-01137