UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: INVOKANA (CANAGLIFLOZIN)
PRODUCTS LIABILITY LITIGATION MDL No. 2750

TRANSFER ORDER

Before the Panel: Various parties in the Western District of Kentucky *Goodwin* action and the Western District of New York *Lo Re* action listed on the attached Schedule A separately move under Panel Rule 7.1 to vacate our order conditionally transferring the actions to the District of New Jersey for inclusion in MDL No. 2750. The *Goodwin* plaintiff moves with respect to his action. As to the *Lo Re* action, movants are the *Lo Re* plaintiff and defendants Sylvia Park, M.D., Alexander Medical Group, P.C., and defendant Richard Patrick Sullivan, M.D.[1] Rochester Regional Health, which is another defendant in *Lo Re*,. filed a response in support of vacatur. Defendants Janssen Pharmaceuticals, Inc. (Janssen), and Johnson & Johnson (J&J) oppose the motion as to *Goodwin*, and Janssen, Janssen Research & Development, LLC, and J&J oppose the motions as to *Lo Re*.

After considering the argument of counsel, we find that *Goodwin* and *Lo Re* involve common questions of fact with actions transferred to MDL No. 2750, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions in the MDL "share factual questions arising from allegations that taking Invokana or Invokamet may result in patients suffering various injuries, including diabetic ketoacidosis and kidney damage." *See In re: Invokana (Canagliflozin) Prods. Liab. Litig.*, 223 F. Supp. 3d 1345, 1348 (J.P.M.L. 2016). Both *Goodwin* and *Lo Re* plainly involve claims of personal injury as a result of taking Invokana and thus fall within the MDL's ambit.

In opposition to transfer, the *Goodwin* and *Lo Re* plaintiffs argue that the alleged injury in their cases is Fournier's gangrene, whereas the alleged injuries at issue in the MDL are limited to diabetic ketoacidosis, kidney injury, and lower limb amputation. Plaintiffs also argue that transfer would prejudice them, as they would need to comply with the transferee court's Administrative Order No. 1, which sets forth deadlines for plaintiffs to submit pharmacy and medical records, as well as a Rule 26(a)(2) case-specific expert report from a medical expert attesting to a reasonable degree of medical probability that the plaintiff suffered an injury caused by Invokana, and providing the factual bases for that attestation. These arguments are not convincing. First, the MDL is not limited to the referenced injuries. *See* 223 F. Supp. 3d at 1348. Indeed, there already is a case involving Fournier's gangrene in the MDL. Second, even if the MDL were so limited, the *Goodwin* and *Lo Re* plaintiffs themselves have not restricted their allegations to Fournier's gangrene. The

[1] To be precise, three motions to vacate were filed as to *Lo Re*: one by plaintiff, one by defendants Park and Alexander Medical Group, and one by defendant Sullivan.

Goodwin plaintiff alleges that he suffered Fournier's gangrene and "other severe and personal injuries" as a result of taking Invokana. *See Goodwin* Compl. ¶ 55. Similarly, the *Lo Re* plaintiff asserts that her decedent suffered "various injuries" caused by the drug. *See Lo Re* Compl. ¶ 53. Also, like actions already in the MDL, both *Goodwin* and *Lo Re* contain broad allegations concerning the development, testing, labeling, and marketing of Invokana. *See, e.g.*, *Goodwin* Compl. ¶ 3 (alleging "negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and sale of Invokana"); *Lo Re* Compl. ¶ 109 (alleging that design defects in Invokana "cause an unreasonable increased risk of injury, including but not limited to heart attack, renal failure, renal impairment, renal insufficiency, ketoacidosis, severe infections, sepsis, and death"). Third, with respect to Administrative Order No. 1, the *Goodwin* and *Lo Re* plaintiffs are free to argue to the transferee court that their time for compliance should be extended in light of their alleged injuries or other case-specific circumstances.

The arguments of the healthcare provider defendants in *Lo Re* also do not warrant vacatur. The Panel consistently has held that the pendency of jurisdictional objections is not an impediment to Section 1407 transfer. And, in deciding issues of transfer, the Panel looks to the overall convenience of the parties and witnesses in the litigation as a whole. *See, e.g., In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

IT IS THEREFORE ORDERED that the *Goodwin* and *Lo Re* actions are transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Brian R. Martinotti for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah S. Vance
Chair

Lewis A. Kaplan
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Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
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PRODUCTS LIABILITY LITIGATION MDL No. 2750

SCHEDULE A

Western District of Kentucky

GOODWIN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:19-00079

Western District of New York

LO RE v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 6:19-06170