UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ZANTAC (RANITIDINE)
PRODUCTS LIABILITY LITIGATION MDL No. 2924

TRANSFER ORDER

Before the Panel: Plaintiffs in the four actions listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred their actions to the Southern District of Florida for inclusion in MDL No. 2924. Defendants Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Corporation, Boehringer Ingelheim USA Corporation, GlaxoSmithKline LLC, GlaxoSmithKline Holdings (Americas) Inc., Pfizer Inc., Sanofi US Services Inc., and Sanofi-Aventis U.S. LLC oppose the motion to vacate.

In support of their motion to vacate, plaintiffs argue that federal subject matter jurisdiction over their actions is lacking and that their pending motions for remand to state court should be decided before transfer. We are not persuaded by this argument. The Panel has held that such jurisdictional objections generally do not present an impediment to transfer.[1] *See, e.g.*, *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) ("[R]emand motions can be presented to and decided by the transferee judge."). "This is so even where, as here, plaintiffs assert that the removals were patently improper." *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018).

Plaintiffs also argue that pretrial proceedings in the MDL have concluded, such that transfer would not be efficient or convenient. They point to an order issued by the transferee court excluding plaintiffs' general causation experts and granted defendants summary judgment. *See In re Zantac (Ranitidine) Prods. Liab. Litig.*, 644 F. Supp. 3d 1075 (S.D. Fla. 2022). That order, however, only applied to five "designated" cancer types that were prosecuted by lead counsel (bladder; esophageal; gastric; liver; and pancreatic). Plaintiffs here, though, assert "non-designated" cancers (specifically, breast cancer, colorectal cancer, and prostate cancer). Litigation as to such non-designated cancer claims is ongoing. For instance, Pretrial Order #81 established procedures to advance the litigation of non-designated cancer claims (such as those asserted by plaintiffs here), including deadlines for expert reports. *See* Pretrial Order # 81, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, C.A. No. 9:20-md-02924 (S.D. Fla. Feb. 14, 2023), ECF No. 6271.

[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.

Notably, the transferee court itself has rejected the contention that pretrial proceedings in these cases has concluded:

> [T]he factual premise of the Plaintiff's motion to transfer and Motion to Stay is incorrect. The Plaintiff's case is not "the only case remaining in the MDL," as other cases that fall within the scope of cancers addressed in Pretrial Order 81 remain pending. And contrary to the Plaintiff's statement that the proceedings in this MDL "have run their course," cases continue to be filed and transferred to this MDL.

Order Denying Mot. to Stay at 2–3, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, C.A. No. 9:20-md-02924 (S.D. Fla. Aug. 10, 2023), ECF No. 6890 (internal citations omitted).[2]

Finally, plaintiffs contend they will experience delay in resolution of their remand motions and prejudice if transferred to the MDL. This argument assumes that plaintiffs ultimately will be successful in the motions for remand—an assumption we cannot make. *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) ("Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case."). In any event, transfer of an action is appropriate if it furthers the expeditious resolution of the litigation taken as a whole, even if some parties to the action might experience inconvenience. *See 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.").

Therefore, after considering the parties' arguments, we find that the actions listed on Schedule A involve common questions of fact with the actions transferred to MDL No. 2924, 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 this litigation. In our order centralizing this litigation, we held that the Southern District of Florida was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that ranitidine, the active molecule in Zantac and similar heartburn medications, can form the carcinogen N-Nitrosodimethylamine (NDMA), either during storage or when metabolized in the human body. *See In re Zantac (Ranitidine) Prods. Liab.*

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[2] Plaintiffs additionally rely on an order dismissing certain plaintiffs who failed to comply with Pretrial Order #81 to suggest that personal injury claims are no longer being "coordinated" within the MDL. *See* Final Order of Dismissal in Non-Designated Cancer Cases, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, C.A. No. 9:20-md-02924 (S.D. Fla. July 14, 2023), ECF No. 6766. This suggestion is flawed. The transferee court states only that non-designated cancer cases are not being prosecuted by lead counsel, but by each plaintiff's counsel. *Id.* at 2–3 ("Because of lead counsel's decision not to pursue those cases, and because of the (relatively) small number of cases at issue, the Court [in Pretrial Order #81] required each individual Non-Designated Cancer Plaintiff to prosecute his or her case on an individualized basis."). Coordination within an MDL does not require lead counsel—indeed, many smaller MDLs proceed without any appointment of lead counsel.

Litig., 437 F. Supp. 3d 1368, 1369 (J.P.M.L. 2020). Like the actions in the MDL, plaintiffs in these four actions allege that they developed cancer caused by ingestion of Zantac or similar ranitidine-containing products.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Southern District of Florida and, with the consent of that court, assigned to the Honorable Robin L. Rosenberg for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Karen K. Caldwell
Chair

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SCHEDULE A

Northern District of Illinois

KWIT v. WALGREEN CO., ET AL., C.A. No. 1:23−13949
SANTIAGO v. WALGREEN CO., ET AL., C.A. No. 1:23−13951
TUTWILER v. WALGREEN CO., ET AL., C.A. No. 1:23−13952
VOGEL v. WALGREEN CO., ET AL., C.A. No. 1:23−13953