

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ACETAMINOPHEN - ASD/ADHD
PRODUCTS LIABILITY LITIGATION**

MDL No. 3043

ORDER DENYING TRANSFER

Before the Panel: Plaintiffs represented by co-lead counsel in MDL No. 3043 move under 28 U.S.C. § 1407 for transfer of the insurance coverage action listed on Schedule A (*LNK*) to MDL No. 3043. The MDL consists of personal injury actions alleging that over-the-counter acetaminophen products used by pregnant women altered fetal development and increased the risk of autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD) in their children. The parties to the insurance coverage action – plaintiff L.N.K. International, Inc., and defendant Continental Casualty Company (“Continental”) – oppose transfer.

After considering the argument of counsel, we deny the motion for transfer. The *LNK* action is a multi-product declaratory judgment insurance coverage action that involves coverage questions beyond the products at issue in MDL No. 3043. Generic manufacturer LNK seeks coverage from its former insurer Continental for three types of consumer claims and products, only the last of which concern the MDL: (1) “Non-Drowsy” actions alleging that store brand cough syrup products with dextromethorphan hydrobromide are falsely labeled “Non-Drowsy”; (2) “Rapid Release” actions alleging that store brand acetaminophen “Rapid Release Gels” are not rapid release; and (3) ASD/ADHD actions alleging that store brand acetaminophen products used by pregnant women altered fetal development and increased the risk of ASD and ADHD in their children. Although the ASD/ADHD actions for which LNK seeks coverage appear to be part of the MDL,¹ it would be inefficient to bring coverage claims arising from the first two unrelated litigation matters into this mass tort MDL.

We also observe that the extent of overlapping discovery between *LNK* and the MDL is sharply disputed. Plaintiffs’ co-lead counsel in the MDL anticipate that *LNK* will involve discovery on the insured’s knowledge of the health risks presented by acetaminophen and the adequacy of its labeling, which they assert will be part of the discovery in the MDL. The parties to *LNK* represent that the duty to defend claims in *LNK* will be resolved without discovery and that, as to the duty to indemnify claim, they will not take discovery that overlaps with the MDL

¹ Movants do not provide the names of these ASD/ADHD actions but represent that “the *LNK* action arises from the claims pending in MDL No. 3043.” *See* Mot. to Transfer at 6 (J.P.M.L. Dec. 23, 2022).

discovery. We find it unnecessary to weigh in on the likely scope of discovery in *LNK* given the non-common issues discussed above, but note that MDL counsel's expectations for discovery in *LNK* are not supported by the categories of discovery discussed in the *LNK* scheduling order. We also find it significant that the parties that purportedly would benefit from centralized discovery – the insured and insurer – all oppose transfer.

A further consideration weighing against transfer is that significant coverage questions in *LNK* appear to turn on policy-specific issues that are wholly unrelated to the MDL. These include (1) *LNK*'s cancellation of the policy in mid-2022 and the extent of coverage under an alleged 90-day extension period; and (2) whether Continental is entitled to reformation of the policy due to an alleged "clerical error" in the definition of "damages" in the policy.

In deciding whether to centralize an insurance coverage action with underlying tort claims, the Panel considers several factors including whether the same products and alleged defects are involved, whether the insurance coverage action involves the same factual discovery as the underlying tort actions, and whether the questions in the coverage action are primarily legal questions requiring little or no discovery.² Centralization of insurance actions in an MDL "will always depend on the particular facts and circumstances of the litigation."³ On the record before us, we find that the case-specific factual and legal issues in the *LNK* action disfavor transfer, and movants' speculation about potentially overlapping discovery is insufficient to support transfer.

IT IS THEREFORE ORDERED that the motion for transfer of the action listed on Schedule A is DENIED.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell

Chair

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² See, e.g., *In re Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices, and Prods. Liab. Litig.*, MDL No. 2936, Doc. No. 69 (J.P.M.L. Feb. 5, 2021); *In re Chinese Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2010 WL 11747797, at *1 (J.P.M.L. June 15, 2010).

³ See *In re Chinese Manufactured Drywall Prods. Liab. Litig.*, 2010 WL 11747797, at *1.

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MDL No. 3043

SCHEDULE A

Eastern District of New York

L.N.K. INTERNATIONAL, INC. v. CONTINENTAL CASUALTY COMPANY,
C.A. No. 2:22-05184