UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FLUOROQUINOLONE PRODUCTS LIABILITY LITIGATION MDL No. 2642

TRANSFER ORDER

Before the Panel:[*] Plaintiff in the action listed on Schedule A (*Jackson*) moves under Panel Rule 7.1 to vacate the order conditionally transferring his action to MDL No. 2642. Defendants[1] oppose the motion to vacate and support transfer.

Plaintiff acknowledges that, like the actions in MDL No. 2642, his complaint alleges that, as a result of using fluoroquinolone antibiotics he suffers from irreversible peripheral neuropathy and that the warnings provided by defendants concerning that risk were inadequate. Plaintiff specifically alleges that he used Cipro and Levaquin, two of the three drugs at issue in the MDL. But he opposes transfer, arguing principally that his action involves additional unique injuries that have not been addressed in the MDL, in particular, aortic aneurysm and permanent heart damage.[2] He argues that as a result of these differences, inclusion of his action in the MDL would not be just or efficient because discovery in his action will differ significantly. He further argues that pretrial proceedings in the MDL are effectively done, leaving nothing to coordinate.

We find these arguments unconvincing. The factual allegations in *Jackson* concerning the alleged risk of peripheral neuropathy presented by fluoroquinolones and defendants' conduct overlap substantially with the actions in MDL No. 2642. Indeed, the *Jackson* complaint makes the same allegations about the risk of peripheral neuropathy as the actions in the MDL, including defendants' alleged decades-long knowledge of the risk and the regulatory history. Additionally, the Panel previously has held in this MDL that, where the actions raise common issues concerning peripheral neuropathy, the assertion of additional unrelated injuries does not prevent transfer. *See In re Fluoroquinolone Prods. Liab. Litig.*, MDL No. 2642, Transfer Order (*Zloch* and *Wolbach*), Doc. No. 535, at 1-2 (J.P.M.L. Feb. 2, 2017) (transferring actions over plaintiffs' objections that "they suffered additional injuries unrelated to peripheral neuropathy" and that "their actions

[*] Judge Catherine D. Perry did not participate in the decision of this matter.

[1] Bayer HealthCare Pharmaceuticals Inc.; Bayer Corporation; Janssen Pharmaceuticals, Inc.; Janssen Research & Development, LLC; Johnson & Johnson; and McKesson Corporation.

[2] Plaintiff also alleges that he suffers from kidney damage and chronic tendinopathy as a result of using fluoroquinolones.

present unique factual issues concerning the risk of concomitant injury to multiple body systems"; explaining that plaintiffs' allegations concerning "the alleged risk of peripheral neuropathy . . . and defendants' conduct overlap substantially with the actions in MDL No. 2642").[3]

Plaintiff further objects to transfer on the ground that the MDL is effectively over, as most of the actions have settled or been dismissed. While the MDL undoubtedly is at an advanced stage, we conclude that transfer of *Jackson* remains appropriate. Whether the continued inclusion of tag-along actions is appropriate is based upon a review of the status of the MDL proceedings and an assessment of the relative merits of transferring additional cases. *See In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F. Supp. 2d 1371, 1372 (J.P.M.L. 2009). In MDL No. 2642, the transferee court continues to actively manage pretrial proceedings in the non-settled actions, including, for example, issuing substantive decisions on pretrial motions and overseeing compliance with discovery obligations.[4] We believe that the transferee court's continued management of tag-along actions is appropriate in these circumstances.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Minnesota and, with the consent of that court, assigned to the Honorable John R. Tunheim for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez

[3] The pretrial proceedings in this MDL routinely have accommodated injuries in addition to peripheral neuropathy, as shown by the master and short-form complaints. The master complaint includes factual allegations concerning the alleged risk of fluoroquinolones to multiple body systems, including the cardiovascular system, and the short-form complaint allows plaintiffs to assert claims as to such injuries.

[4] Plaintiff's contention that the MDL has been inactive over the past year is incorrect. *See, e.g., Butkiewicz v. Bayer Corp.*, No. 19-1602, 2021 WL 396819 (D. Minn. Feb. 4, 2021) (granting in part and denying in part defendants' motion to dismiss); *Akman v. Bayer HealthCare Pharmaceuticals Inc.*, No. 17-0260, 2020 WL 6489186 (D. Minn. Nov. 4, 2020) (granting defendants' motion for judgment on the pleadings with leave to amend); *Chauvin v. Bayer HealthCare Pharmaceuticals Inc.*, No. 18-0579, 2020 WL 5913426 (D. Minn. Oct. 6, 2020) (dismissing action based on plaintiffs' failure to comply with requirements pertaining to general causation and liability experts).

IN RE: FLUOROQUINOLONE PRODUCTS LIABILITY LITIGATION MDL No. 2642

SCHEDULE A

Middle District of Florida

JACKSON v. BAYER HEALTHCARE PHARMACEUTICALS, INC., ET AL.,
C.A. No. 6:20-02219