

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

IN RE: TASIGNA (NILETINIB)
PRODUCTS LIABILITY LITIGATION

Case No. 6:21-md-3006-RBD-DAB
(MDL No. 3006)

This document relates to all actions.

ORDER

Before the Court is Defendant's motion for case-specific discovery in all cases. (Doc. 330.) The motion is due to be denied.

At Defendant's request and over Plaintiffs' objection (Doc. 102, p. 7), the Court previously permitted case-specific discovery only in the cases in this MDL that originated in the Middle District of Florida ("FLMD"). (Doc. 171.) Defendant now asks the Court to permit case-specific discovery in the other non-FLMD cases, complaining that Plaintiffs "chose" purportedly unrepresentative cases from the pool for workup and that the Court has let the other cases "languish" without individual discovery. (Doc. 330.)

But the bluster of Mr. Johnston's brief does its best to obscure the true facts.¹ Contrary to his unfounded assertions, the Court did not allow Plaintiffs to choose which cases were worked up with no regard for a representative pool or

¹ Counsel's aggressive tone pushes the boundary of professionalism, ignores the record facts, and does nothing to advance his client's cause. The Court expects more. *See* Local Rule 2.01(e).

Defendant's wishes. Rather, Plaintiffs filed many of their FLMD cases before this MDL was transferred here. (See Doc. 1; see also Doc. 331, p. 4.) And it was Defendant, not Plaintiffs, who advocated for consolidation in the FLMD. (Doc. 1, p. 1.) Then it was Defendant, not Plaintiffs, who chose not to waive *Lexecon* rights, ensuring that the Court would only have the authority to fully try those cases that originated in the FLMD, Defendant's preferred consolidation venue. (Doc. 32, pp. 79:20-81:5); see *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998); *In re Gerber Probiotic Prods. Mktg. & Sales Pracs. Litig.*, 899 F. Supp. 2d 1378, 1380 n.4 (U.S. JPML 2012) ("Following *Lexecon*, transferee courts are limited to conducting bellwether trials . . . in those actions over which the transferee court has jurisdiction outside the multidistrict context, either because the action was filed directly with the transferee court or because the parties waived their right to remand to the transferor court."). As an MDL transferee judge, in the absence of a *Lexecon* waiver, the Court's purview is targeted to pretrial rulings common to all cases. See *In re Denture Cream Prods. Liab. Litig.*, No. 09-2051-MD, 2011 WL 13220167, at *5 (S.D. Fla. Aug. 16, 2011) (noting that "issues related to general causation [should] be addressed for the entire MDL, and case-specific . . . discovery [should] be conducted upon remand"). Indeed, Mr. Johnston expressly anticipated that the non-FLMD cases would ultimately be remanded "with some discovery left" to complete on a case-specific basis. (Doc. 32, p. 80:23-24.) So it is actually

Defendant that has engineered the situation about which it currently complains, pointing its finger at Plaintiffs and the Court instead of its own choices and ignoring its own earlier acknowledgement of the effect of those choices. As a result, case-specific discovery will continue only in the FLMD cases.

A ruling on Defendant's MDL-wide motion for summary judgment will issue in due course. The Court anticipates it will be forthcoming shortly. But setting that work aside to resolve virtually baseless motions "full of sound and fury, signifying nothing"² does not advance the cause.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's motion (Doc. 330) is **DENIED**.

DONE AND ORDERED in Chambers in Orlando, Florida, on December 13, 2023.




ROY B. DALTON, JR.
United States District Judge

² WILLIAM SHAKESPEARE, MACBETH act 5, sc. 5.