

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BCBSM, Inc., Health Care Service Corporation, Molina Healthcare, Inc., and Blue Cross and Blue Shield of Florida, Inc.,

Plaintiffs,

v.

Celgene Corporation and Bristol-Meyers Squibb Corporation,

Defendants.

Case No. 20-cv-02071 (SRN/ECW)

ORDER

Charles Z. Kopel, Lowey Dannenberg, P.C., 100 Front Street, Suite 520, West Conshohocken, PA 19428; Peter D. St. Phillip, Jr. and Uriel Rabinovitz, Lowey Dannenberg, P.C., 44 South Broadway, Suite 1100, White Plains, NY 10601; and Thomas R. Bennerotte and Vincent J. Moccio, Bennerotte & Associates, P.A., 3085 Justice Way, Suite 200, Eagan, MN 55121, for Plaintiffs.

Andrew M. Luger and Lisa L. Beane, Jones Day, 90 South Seventh Street, Suite 4950, Minneapolis, MN 55402; Benjamin M. Greenblum, Colette Connor, and John E. Schmidlein, Williams & Connolly LLP, 725 Twelfth Street, Washington, DC 20005; Brian David Hershman, Jones Day, 555 South Flower Street, 50th Floor, Los Angeles, CA 90071; and Rajeev Muttreja and Toni Citera, Jones Day, 250 Vesey Street, New York, NY 10281, for Defendants.

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on three motions filed by the parties. First, Plaintiffs move to remand this case to the District Court for Dakota County, Minnesota [Doc. No. 24]. Second, Defendants move to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), or in the alternative, to transfer this case to the

United States District Court for the District of New Jersey [Doc. No. 39]. And finally, Defendants move to dismiss for failure to state a claim upon which relief may be granted under Rule 12(b)(6) [Doc. No. 45]. Based on a review of the files, submissions, and proceedings herein, and for the reasons below, the Court **DENIES** Plaintiffs' Motion to Remand, **GRANTS** Defendants' Motion to Dismiss or Transfer Venue, and **DENIES as moot** Defendants' Motion to Dismiss under Rule 12(b)(6).

I. BACKGROUND

In this case, Plaintiffs charge Defendant Celgene Corporation and its parent company, the Bristol-Meyers Squibb Company (collectively, "Celgene"), with suppressing generic competition against Celgene's Thalomid and Revlimid drugs in violation of state antitrust laws. (Compl. [Doc. No. 1-1], at ¶¶ 4-6.) Specifically, Plaintiffs allege that Celgene: (1) manipulated its Risk Evaluation and Mitigation Strategy ("REMS") programs, which are designed to control distribution of the drugs and protect patients from the drugs' harmful properties, in order to prevent potential generic competitors from obtaining the samples of the drugs necessary to develop generics; (2) prevented pharmacies and ingredient suppliers from supplying such samples to potential generic competitors; (3) filed baseless citizen petitions with the United States Food and Drug Administration to prevent approval of generic versions of Thalomid and Revlimid; (4) fraudulently obtained patents from the United States Patent and Trademark Office; and (5) engaged in serial "sham" patent infringement lawsuits.¹ (*Id.* ¶ 4.) Plaintiffs also allege that when Celgene's efforts

¹ One plaintiff, the Health Care Service Corporation, also asserts fraud, negligent misrepresentation, and unjust enrichment claims regarding Celgene's alleged promotion of

failed to prevent potential generic competition, Celgene “entered into confidential settlements with its competitors that may have included anti-competitive ‘pay-for-delay’ reverse payments.” (*Id.* ¶ 5.) As a result of these efforts, Celgene allegedly maintained a monopoly over Thalomid and Revlimid, enabling it to charge inflated prices that resulted in Revlimid becoming the second highest grossing drug worldwide. (*Id.* ¶¶ 11-13.)

Plaintiffs are BCBSM, Inc., the Health Care Service Corporation (“HCSC”), Molina Healthcare, Inc. (“Molina”), and Blue Cross and Blue Shield of Florida, Inc. (“Florida Blue”)—insurers who allege that they were required to pay “supracompetitive prices” to reimburse members for Thalomid and Revlimid. (*Id.* ¶¶ 13, 21-24.) Plaintiffs originally filed their Complaint in the District Court for Dakota County, Minnesota, asserting several causes of action under numerous states’ antitrust and tort laws. (*See id.* ¶¶ 545-92.)

After Celgene removed to this Court, Plaintiffs moved to remand, arguing that this Court lacks subject-matter jurisdiction. Celgene, in turn, moved to dismiss Plaintiffs’ claims for lack of personal jurisdiction or, in the alternative, to transfer the case to the United States District Court for the District of New Jersey. In addition, Celgene moved to dismiss for failure to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6).

Against this backdrop, the Court will turn to the record pertinent to the parties’ motions. The Court will first examine Plaintiffs’ allegations regarding personal jurisdiction

Thalomid and Revlimid for off-label uses, for which Thalomid and Revlimid were known to be ineffective. (*See id.* ¶¶ 575-92.)

over Celgene, which are relevant to both Plaintiffs' Motion to Remand and Celgene's Motion to Dismiss or Transfer Venue. Then, the Court will briefly overview the lengthy history of litigation underlying this lawsuit, which is eminently relevant to Celgene's request to transfer this case to the District of New Jersey. Given the Court's ultimate disposition of this matter, it need not examine Plaintiffs' allegations regarding the merits of their claims.

A. The Parties' Connections to Minnesota

Both Plaintiffs' Motion to Remand and Celgene's Motion to Dismiss or Transfer Venue turn on the connection between the parties, their claims, and Minnesota. As alleged in the Complaint, BCBSM is both headquartered and incorporated in Minnesota; HCSC is headquartered and incorporated in Illinois; Florida Blue is headquartered and incorporated in Florida; and Molina is headquartered in California and incorporated in Delaware. (*Id.* ¶¶ 21-24.) Celgene is headquartered in New Jersey and incorporated in Delaware, and Bristol-Meyers Squibb is headquartered in New York and incorporated in Delaware. (*Id.* ¶¶ 26-27.)

The alleged connection between the parties and this forum arises principally from Prime Therapeutics LLC and Prime Therapeutics Specialty Pharmacy LLC (collectively, "Prime Therapeutics"). Prime Therapeutics are pharmacy benefit managers, are incorporated and headquartered in Minnesota, and are partially owned by HCSC. (*Id.* ¶ 20.) It is alleged that HCSC, BCBSM, and Florida Blue reimbursed claims for Thalomid and Revlimid through Prime Therapeutics, including claims in Dakota County, Minnesota. (*Id.* ¶ 469.) Plaintiffs specifically allege that HCSC spent \$57,000 on Thalomid and \$675,000

on Revlimid for members in Dakota County. (*Id.* ¶ 20.) However, Plaintiffs do not allege that Molina had any relationship with Prime Therapeutics, or that Molina reimbursed claims for Thalomid and Revlimid in Minnesota.

Further, Plaintiffs allege that Minnesota pharmacies participated in Celgene's REMS programs—which are designed to control distribution of Thalomid and Revlimid, given the drugs' history of dangerous side-effects. (*See id.* ¶¶ 103-12.) Plaintiffs allege that Celgene abused its REMS programs to prevent distribution of Thalomid and Revlimid to potential competitors. (*Id.*) Although the Complaint alleges generally that Celgene operated its REMS programs through specialty pharmacies, Plaintiffs do not specifically identify any Minnesota pharmacies that participated in the programs, or any Minnesota manufacturers that were harmed by the programs. (*See id.* ¶¶ 103-06.)

Finally, Plaintiffs argue—though the Complaint does not allege—that Minnesota is a “crucial hub” for the sale of pharmaceuticals, and that Celgene employs sales representatives to interact with physicians and other healthcare professionals in the state. (Mem. in Opp'n to Mot. to Dismiss or Transfer [Doc. No. 54], at 15.)

B. Litigation Involving Thalomid and Revlimid

Plaintiffs are not the first to allege that Celgene has engaged in anticompetitive practices with respect to Thalomid and Revlimid. In 2014, generic manufacturer Mylan brought an antitrust suit against Celgene in the District of New Jersey. After protracted litigation culminating in a lengthy and detailed summary judgment order, the case settled in 2019. *See Mylan Pharm., Inc. v. Celgene Corp.*, No. 14-cv-02094-ES-MAH (D.N.J. Oct. 3, 2018). In addition, a putative class of indirect purchasers brought similar antitrust claims

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