UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DANIEL WEIBEL, Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-4518
LISA CHRISTIAN NETHERY Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-5005
DONNA WALKER Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6375
GLORIA PLEDGER Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6562

JOHN INGRAM Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6836
ANDREA LEEDS Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6837
RACHEL SNYDER Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6747
CYNTHIA WILLIAMS Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6838

KIMBERLY PEREZ Plaintiff, v. HORIZON THERAPEUTICS USA, INC. Defendant.	Civil Action No. 1:22-cv-6718

DEFENDANT HORIZON THERAPEUTICS USA, INC.'S OBJECTION AND RESPONSE TO PLAINTIFFS' MOTION TO RELATE AND REASSIGN CASES UNDER LOCAL RULE 40.4 AND INTERNAL OPERATING PROCEDURE 13(e)

Defendant, Horizon Therapeutics USA, Inc. ("Horizon") objects to the reassignment of cases proposed by Plaintiffs. Local Rule 40.4 requires proof of relatedness, substantial saving in judicial time and effort, and that the cases are subject to disposition in a single proceeding. Plaintiffs can satisfy none of these essential elements. The cases involve substantially different facts that directly impact the claims and defenses in each case. The applicable law in each case is unique due to choice of law principles. There would be little or no judicial savings in efficiency because of the different issues of law and fact applicable to each case. For the same reasons, the cases cannot be determined in a single proceeding, as individual determinations are necessary. In fact, distinct motions to dismiss – based on differing facts and laws – are being filed in each case.[1]

Though the cases are fundamentally inappropriate for reassignment under LR 40.4, Horizon believes that coordination of certain discovery, pursuant to a uniform case management plan governing written discovery, company witness depositions, and expert discovery, to the extent there is commonality concerning specific issues, would promote judicial efficiency.

[1] On January 9, 2023, Horizon filed motions to dismiss in the *Weibel* (case no. 1:22-cv-4518, Dkt. Nos. 32 and 33) and *Nethery* No. (case no. 1:22-cv-5005, Dkt. Nos. 25 and 26) cases pending before this Court, as well as in the *Walker* (case no. 1:22-cv-6375, Dkt. Nos. 17 and 18) case, pending before Judge Mondalvo. Horizon will be filing additional motions to dismiss in the remaining cases by the end of January.

LEGAL STANDARD

"To have a case reassigned based on relatedness, the movant must satisfy **both** Local Rule 40.4(a) and (b)." *Donahue v. Elgin Riverboat Resort*, No. 04 C 816, 2004 WL 2495642, at *1 (N.D. Ill. Sept. 28, 2004) (emphasis added)(citing *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2003 U.S. Dist. LEXIS 7466, at *3 (N.D. Ill. May 5, 2003)).

LR 40.4(a) provides as follows:

> (a) Definitions. Two or more civil cases may be related if one or more of the following conditions are met:
>
> (1) the cases involve the same property;
>
> (2) the cases involve some of the same issues of fact or law;
>
> (3) the cases grow out of the same transaction or occurrence; or
>
> (4) in class action suits, one or more of the classes involved in the cases is or are the same.

"The fact that the cases are brought against the same defendant and generally involve the same types of allegations are not sufficient to show the cases are related pursuant to Local Rule 40.4(a)." *Donahue*, 2004 WL 2495642 at *1).

LR 40.4(b) imposes even stricter requirements before reassignment is permissible. *See Williams v. Walsh Const.*, No. 05 C 6807, 2007 WL 178309, at *2 (N.D. Ill. Jan. 16, 2007)("Once the cases are determined to be related under LR 40.4(a), LR 40.4(b) requires more stringent criteria for the case to qualify for reassignment."). LR 40.4(b) reads as follows:

> (b) Conditions for Reassignment. A case may be reassigned to the calendar of another judge if it is found to be related to an earlier-numbered case assigned to that judge and **each of the following criteria is met**:
>
> (1) both cases are pending in this Court;
>
> (2) **the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort**;

> (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; **and**
>
> (4) **the cases are susceptible of disposition in a single proceeding**.

(Emphasis added). All four criteria under LR 40.4(b) must be satisfied for a related case to be reassigned.

In addition to the requirements in sections (a) and (b) of the Rule, LR 40.4(c) requires a moving party to set forth the points of commonality in sufficient detail for relatedness under section (a) and "indicate the extent to which the conditions required by section (b) will be met" as well. These provisions "impose an obligation on the moving party to specifically identify why each of the four conditions under LR 40.4(b) is met." *Williams v. Walsh Const.*, No. 05 C 6807, 2007 WL 178309, at *2 (N.D. Ill. Jan. 16, 2007) (citations omitted). Additionally, "[i]n order that all parties to a proceeding be permitted to respond on the questions of relatedness and possible reassignment, such motions should not generally be filed until after the answer or motions in lieu of answer have been filed in each of the proceedings involved." LR 40.4(c).

ARGUMENT

A. The requirements of LR 40.4 cannot be met and the cases should not be reassigned.

1. *Plaintiffs failed to satisfy the requirements of LR 40.4(a).*

First, Plaintiffs cannot meet their burden under LR 40.4(a). As this Court has held, "[t]he fact that the cases are brought against the same defendant and generally involve the same types of allegations are not sufficient to show the cases are related pursuant to Local Rule 40.4(a)." *Donahue*, 2004 WL 2495642 at *1.

In *Donahue*, defendant moved to reassign racial discrimination claims filed by several employees. First, evaluating the motion under LR 40.4(a), the court pointed out that the individual

claims lacked commonality, as the plaintiffs' claims involved different decisionmakers and their cases each involved a unique set of facts specific to each plaintiff. "The fact that the cases are brought against the same defendant and generally involve the same types of allegations are not sufficient to show the cases are related pursuant to Local Rule 40.4(a). Therefore, Elgin's motion must be denied on this basis alone." *Id.* at *2.

Like *Donahue*, the factual and legal differences in these cases make reassignment improper here. In their Motion, Plaintiffs have relied almost exclusively upon the argument that their lawsuits are against the same defendant and their own allegations are similar in the cases they filed against Horizon. However, Plaintiffs' argument ignores the significant differences in each of those lawsuits which render them inappropriate for reassignment under LR 40.4. As discussed in further detail below, Horizon's defenses, the applicable law, the facts concerning each individual plaintiff, and the analysis necessary to resolve each case present substantial differences. The cases are not sufficiently related to meet the requirements of LR 40.4, and reassignment should not be permitted.

2. *Plaintiffs cannot satisfy their burden under LR 40.4(b).*

Nor can Plaintiffs meet the stringent requirements of LR 40.4(b). Here, the cases present differences in the applicable law, differences in fact, and differences in the application of law to fact which prohibit reassignment under LR 40.4.

a. Reassignment of the cases would not result in "substantial saving of judicial time and effort" as required by LR 40.4(b)(2).

"Under 40.4(b)(2), the judicial savings alleged by the moving party **must be substantial**; a mere assertion that some judicial time and effort would be saved by reassignment is insufficient." *Williams v. Walsh Const.*, No. 05 C 6807, 2007 WL 178309, at *2 (emphasis added) (quoting *Hollinger Int'l, Inc. v. Hollinger, Inc.*, No. 04 C 0698, 2004 WL 1102327, at *2 (N.D. Ill. May 5, 2004)). "Likewise, if the cases will require different discovery, legal findings, defenses or

summary judgment motions, it is unlikely that reassignment will result in a substantial judicial savings." *Id*. (citing *Hollinger,* 2004 WL 1102327 at *2; *Donahue,* 2004 WL 2495642 at *1).

In *Donahue,* the court held that, even if the cases had been sufficiently related under LR 40.4(a), reassignment was nonetheless improper under LR 40.4(b), because the moving party could not satisfy the second and fourth provision of the Rule. The movant failed to show that reassignment would result in "substantial saving of judicial time and effort" because "each plaintiff's claim required individualized proof and was subject to unique defenses." *Id*. at *3. Therefore, each plaintiff's claim would have to be separately litigated, whether in one proceeding or in several.

In their Motion, Plaintiffs cited to *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 839 (7th Cir. 1999), claiming that "the Seventh Circuit has instructed, '[b]y far the best means of avoiding wasteful overlap when related suits are pending in the same court is to consolidate all before a single judge.'" However, that case has no application here. *Blair* involved an interlocutory appeal of a ***class certification*** for multiple overlapping class actions in against Equifax related to the check-verification service that allegedly violated Fair Debt Collection Practices Act. *Blair* concerned an analysis under Rule 23; it had nothing to do with reassignment of cases pursuant to LR 40.4. *Blair* is completely distinctive from a products liability cases involving alleged medical injuries to different plaintiffs based on different facts and under different state laws.

Here, the cases cannot meet the requirements of substantial saving in judicial efficiency as set forth in LR 40.4(b)(2). In each case, the court will be faced with different analyses under the laws of different states to determine the legal issues and the merits of each case. For example, Plaintiffs' warning defect claims depend on what the user and consumer and/or learned intermediary knew about the risks of the product, and when this knowledge was acquired. Here,

there are different legal standards for warning defect claims depending on which state's law applies; different facts depending on when the drug infusions took place; and different risk/benefit analyses for the different patients, depending on their respective conditions and disease states. Not even the analysis of the federal preemption arguments will be the same in each case due to the related facts of each case. Application of preemption principles will vary from case to case depending on when the plaintiffs' respective infusions occurred. Design defect claims will vary from state to state (if not preempted) depending on the legal standard for proving defect. Finally, the *Twombly-Iqbal* analysis is dependent on the substantive law of the state where the infusions occurred.

Though reassignment might afford *Plaintiffs* some reduction in their own time and effort, the relevant focus under the Rule is whether the ***Court*** will have "substantial" saving in its time and effort. Due to their many significant differences, the reassignment of these cases would result in minimal, if any, savings in judicial time and effort. *See e.g., Teamsters Loc. 705 Pension v. A.D. Conner, Inc.*, No. 10 C 6352, 2011 WL 1674839, at *2 (N.D. Ill. May 4, 2011)("Although there would be some saving of judicial time and effort because there are some common issues of fact regarding damages, such saving would be minimal at best because ultimately each case will require different discovery, legal findings and damages calculations.").

The factual and legal distinctions – and differing state law for each case – will require separate analyses for each case.[2] Plaintiffs cannot prove – and did not even attempt to do so in their motion – that savings in judicial time and effort would result from reassignment – let alone

[2] *Cf. BP Corp. N. Am. Inc. v. N. Tr. Invs., N.A.*, No. 08-CV-6029, 2009 WL 1684531, at *2 (N.D. Ill. June 15, 2009), relied upon by Plaintiffs, which involved claims of breach of fiduciary duties by an investment company, requiring the court to "**interpret the same provisions in ERISA and will apply the same case law regarding fiduciary duties and prohibited transactions under ERISA**." (Emphasis added).

"substantial" saving as required by the Rule. Should the cases survive Rule 12 motion practice, the cases here "will require different discovery, legal findings, defenses or summary judgment motions," and other dispositive motions – as already demonstrated by Horizon's pending motions to dismiss. *Williams v. Walsh Const.*, No. 05 C 6807, 2007 WL 178309, at *2. Reassignment would not result in "substantial saving in judicial time and effort" because "each plaintiff's claim require[s] individualized proof and [is] subject to unique defenses." *Donahue*, 2004 WL 2495642 at *3. Accordingly, reassignment of these cases is prohibited by LR 40.4(b)(2).

b. The cases are not susceptible to disposition in one proceeding as required by LR 40.4(b)(4).

For the same reasons, Plaintiffs cannot meet their burden under LR 40.4(b)(4) because resolution of common issues would not be "outcome determinative" for all cases. *Donahue*, 2004 WL 2495642 at *2. "[C]ases are rarely susceptible to disposition in one proceeding pursuant to 40.4(b)(4) where the cases involve unique issues of law and fact and those unique characteristics are dominant." *Williams*, 2007 WL 178309, at *2(citations omitted); *see also Donahue*, 2004 WL 2495642 at *2 ("In this case, each individual case relies on different set of facts, and a finding in one case would not be dispositive of any issues in the other cases.").

Plaintiffs relied upon *Pactiv Corp. v. Multisorb Techs., Inc.*, No. 10 C 461, 2011 WL 686813, at *5 (N.D. Ill. Feb. 15, 2011), for their argument in favor of reassignment. Importantly, however, *Pactiv* is a patent infringement case involving the same plaintiff and defendant and nearly identical allegations related to the patents – all of which present crucial differences from the cases at hand. Patent infringement cases are uniquely suitable to meet the requirements for reassignment of LR 40.4. The *Pactiv* court found that the cases involved common issues of fact and law and the same transaction or occurrence. Most patent cases are principally focused on patent validity and/or whether that patent was infringed by a competitor. If a patent is invalid, it is invalid against the

world. The outcome of one case is often determinative of all, satisfying LR 40.4(b)(4). Further, the risk of inconsistent rulings runs high if patent cases are not reassigned, and substantial judicial savings results from reassignment.[3]

Patent infringement cases are fundamentally different from state tort cases such as these, where the laws vary from state to state, and the defenses and claims turn on the individual facts. Additionally, in these cases, every Plaintiff's alleged damages, if any are allowed, are different and vary for each case. Further, patent cases do not involve the type of complex causation issues that are central to the subject cases. Here, causation will be disputed in all cases, and substantially different amongst them.

As set forth above, contrary to *Pactiv*, the factual and legal issues in each case here present significant differences that make a unified resolution of the defenses and claims impossible. Each Plaintiff will have different underlying medical conditions at different stages, different prognoses, different learned intermediaries, different infusion regiments, different treatment facilities, different treatment protocols, different results, different alleged adverse effects, different causation issues, different damages – and different drug infusion dates, which significantly impacts the legal merits and the facts of each case. Horizon will have different defenses to each claim.

LR 40.4(b)(4) cannot be satisfied here because the legal and factual issues are not similar such that resolution of common issues would be "outcome determinative" for all cases. Here, as in *Donahue,* "each individual case relies on different set of facts, and a finding in one case would not be dispositive of any issues in the other cases." *Donahue*, 2004 WL 2495642 at *2. Horizon has multiple motions to dismiss pending in the earlier-filed cases, including two before this Court,

[3] For the same reasons, Plaintiffs' reliance on *21 srl v. Enable Holdings, Inc.*, No. 09 Civ. 3667, 2009 U.S. Dist. LEXIS 115530, *6–7 (N.D. Ill. Dec. 9, 2009), another patent infringement case, is similarly misplaced and unpersuasive here.

and each one is unique, based on the law of different states, and turns on different facts. Resolution of these motions, and even resolution of any of the issues within the motions, will not be determinative of all cases. Thus, the cases are neither related, nor "susceptible of disposition in a single proceeding." The fourth factor cannot be satisfied.

3. *Plaintiffs have not satisfied the requirements of LR 40.4(c).*

Under LR 40.4(c), the moving party is required to "indicate the extent to which the conditions required to section (b) will be met" and "specifically identify why each of the four conditions under LR 40.4(b) is met." *Williams v. Walsh Const.*, No. 05 C 6807, 2007 WL 178309, at *2 (N.D. Ill. Jan. 16, 2007) (citations omitted); *see also Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2003 WL 21011757, at *3 (N.D. Ill. May 5, 2003) ("Moreover, even if the movant could satisfy LR 40.4(b)(4) on the merits, under LR 40.4(c), a motion to reassign must explicitly indicate how conditions required by section (b) will be met if the cases are found to be related."). Conclusory allegations that the LR 40.4(b) requirements are met are insufficient to satisfy a movant's obligations. *See Lawrence E. Jaffe Pension Plan*, 2003 WL 21011757, at *3 (citing *Daniels v. Pipefitters' Ass'n Local Union No. 597*, 174 F.R.D. 408, 411 (N.D.Ill.1997)).

Plaintiffs' motion falls short on explaining specifically how a reassignment would substantially save judicial time and effort or how LR 40.4(b)(4) is met, *i.e.*, how the cases could be determined in a single proceeding. Indeed, Plaintiffs dedicate only one paragraph and a few conclusory sentences to these two crucial factors under the Rule.[4] This lack of specificity alone is fatal to their motion.

[4] *See* DN 24, Plaintiffs' Memorandum in Support of Motion to Relate and Reassign Cases Under Local Rule 40.4 and Internal Operating Procedure 13(e) at p. 8.

B. Limited coordination of discovery may be appropriate under IOP 13.

As an alternative, Plaintiffs request the cases to be "consolidated" under IOP 13(e), describing this IOP as "another vehicle for consolidation of cases." As spelled out in its Introduction, however, the Internal Operating Procedures of the court "does not confer rights upon litigants." *Brieger v. Tellabs*, Inc., 434 F.Supp.2d 567, 569 (N.D. Ill. 2006).

The IOP Introduction states,

> These are procedures for the court's internal operations. They are intended to supplement the Guide to Judiciary Policies and Procedures and the local rules. They set out the procedures generally to be used by chambers and the clerk's office in performing certain administrative tasks. While the procedures are public and available on request, **litigants acquire no rights under them**.

(emphasis added). As in this case, the *Brieger* court noted that the motions to dismiss for the respective cases would have to be assessed under completely different standards, so it would not be more efficient for one judge to deal with the allegedly related cases. *See Brieger*, 434 F.Supp.2d at 569. Thus, even if IOP did confer rights on the moving party, it would still not warrant reassignment of the cases. The court did note, however, that while reassignment was not proper, it was likely that a significant amount of discovery would overlap in the subject cases. *See id*. If discovery proceeded in those cases, the court believed that reassignment ***for the purposes of discovery only***, pursuant to N.D. Ill. IOP 13(e) would be appropriate. *See id*. at 569-70.

Although reassignment of the cases is not appropriate under LR 40.4, a limited coordination of discovery could be appropriate in these cases under IOP 13(e). The provision reads,

> (e) COORDINATED PRETRIALS IN COMPLEX CASES NOT INVOLVING MULTI-DISTRICT LITIGATION. The Executive Committee may determine that it would be in the best interests of efficient judicial administration to hold a coordinated pretrial proceeding in a group of cases which either (1) are not related within the meaning of LR40.4(a) or (2) are related within the meaning of LR40.4(a) but reassignment is not appropriate under LR40.4(b). Where such a determination

> is made, the Committee will designate a judge to hold such a proceeding. The cases shall remain on the calendars of the judges to whom they were assigned at the start of the coordinated proceeding and only matters specified in the order of coordination shall be brought before the designated judge. All judges affected by such a coordinated pretrial proceeding shall be notified by the clerk.

Coordination of certain portions of the discovery in these cases could allow the parties to more efficiently conduct discovery concerning the product – such as Horizon's discovery responses, document production, testimony of company witnesses, and avoid the need for duplicative efforts or unnecessarily subjecting witnesses to multiple depositions concerning the product at issue. Additionally, certain expert discovery could also be part of the plan, to the extent there is commonality.

Although the precise scope of any discovery coordination has not been specified, Horizon believes a plan to maximize judicial efficiencies could be crafted, in the event that any of the cases survive the pending Rule 12 dispositive motions.

CONCLUSION

For the reasons set forth above, reassignment of these cases is improper as Plaintiffs cannot satisfy the requirements of LR 40.4. Horizon concurs that depending upon the scope and the terms, coordination of certain discovery in the cases may be appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system.

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