

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: MENTOR CORP. OBTAPE TRANSOBTURATOR  
SLING PRODUCTS LIABILITY LITIGATION

MDL No. 2004

ORDER VACATING CONDITIONAL TRANSFER ORDERS  
AND DENYING MOTION TO EXPAND THE SCOPE OF MDL NO. 2004

**Before the Panel:**\* Two related motions are pending in this docket. In the first motion, defendants Mentor Worldwide LLC (Mentor) and Coloplast Corp. (Coloplast) separately move, pursuant to Panel Rule 7.1, to vacate our orders conditionally transferring the three actions (*Renaud, Watts, and Fisher*) listed on Schedule A to the Middle District of Georgia for inclusion in MDL No. 2004. In the second motion, the *Renaud, Watts, and Fisher* plaintiffs, together with plaintiffs in six other actions,<sup>1</sup> move, pursuant to 28 U.S.C. § 1407(c), to expand the scope of MDL No. 2004, and transfer a total of fifteen actions (the movants' nine actions and six others), which are listed on Schedule B, to that MDL.

The *Renaud, Watts, and Fisher* plaintiffs oppose the motions to vacate. Mentor and Coloplast oppose plaintiffs' motion to expand the scope of MDL No. 2004, as do Ethicon, Inc., with respect to the Southern District of West Virginia *Lucas* action, and Boston Scientific Corporation with respect to the Southern District of West Virginia *Forbes* action.

The actions presently in MDL No. 2004 share factual issues "as to whether Mentor's 'ObTape' brand transobturator sling, a device used to treat female stress urinary incontinence, was defectively designed and/or manufactured, and whether Mentor failed to provide adequate warnings concerning the device." See *In re: Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, 588 F. Supp. 2d 1374, 1374 (J.P.M.L. 2008). In arguing in favor of expansion of the MDL,<sup>2</sup> plaintiffs argue that the fifteen actions at issue are quite similar to the already-centralized actions, as they involve factual issues arising from allegations that defects in Coloplast's pelvic surgical mesh products cause various and serious injuries to women who are treated with the products to address

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\* Judge Charles R. Breyer took no part in the decision of this matter.

<sup>1</sup> Middle District of Florida *Lariscy*, Northern District of Illinois *Marrero*, District of Kansas *Purvis*, Eastern District of Pennsylvania *Hess*, Southern District of Illinois *Williams*, and Eastern District of Missouri *Wolz*.

<sup>2</sup> In their briefs to the Panel, the *Renaud, Watts, and Fisher* plaintiffs suggest that it is appropriate for us to consider Mentor's and Coloplast's motions to vacate in the context of the motion to expand. We agree with that approach, given that those three actions are encompassed in the fifteen subject to the motion to expand.

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certain medical conditions (*e.g.*, stress urinary incontinence and pelvic organ prolapse). Specifically, moving plaintiffs point out, *inter alia*, that the Aris Transobturator Sling – a device at issue in most of the subject actions – was marketed and sold by Mentor until 2006, when Mentor sold its urogynecological division to Coloplast.<sup>3</sup>

After considering all argument of counsel, however, we are not persuaded an expansion of the scope of MDL No. 2004 is warranted. We centralized that litigation in December 2008, and pretrial proceedings therein are at a substantially advanced stage. Global discovery, for example, was completed more than a year ago. Moreover, from the MDL's inception, the focus has been on Mentor's ObTape product. In our view, transferring non-ObTape claims to the MDL at this point would result in only confusion and delay. Moreover, we note that three of the subject fifteen actions are already in one or the other of the four pelvic repair product MDLs presently pending in the Southern District of West Virginia – because those actions involve not only a Coloplast product but also one or more products at issue in those MDLs.<sup>4</sup> Were we to expand MDL No. 2004, we nevertheless would be strongly inclined to leave those three actions (as well as any other actions involving Coloplast already in those MDLs) where they are. Transferring those actions to an expanded MDL No. 2004 would almost certainly disrupt the ongoing pretrial proceedings occurring in the three involved MDLs, as well as prejudice the non-Coloplast defendants named therein.<sup>5</sup> Such transfer would also run afoul (in some or all cases) of our previous determination to transfer any pelvic repair product action involving multiple products and multiple defendants to the MDL involving the defendant first named in the complaint. *See In re: American Med. Sys., Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, — F. Supp. 2d —, 2012 WL 432533, at \*1 n.4 & 2 (J.P.M.L. Feb. 7, 2012).

IT IS THEREFORE ORDERED that the Panel's conditional transfer orders designated as "CTO-44" and "CTO-45" are vacated.

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<sup>3</sup> Similarly, Novasilk polypropylene mesh, another Coloplast product at issue in some of the subject actions, was initially marketed and sold by Mentor.

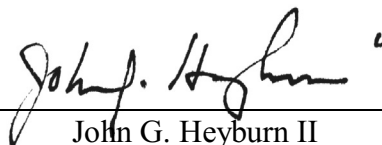
<sup>4</sup> Specifically, the *Lucas* action was commenced in the Southern District of Ohio, and was thereafter transferred to MDL No. 2327, *In re: Ethicon, Inc., Pelvic Repair System Products Liability Litigation*; the *Forbes* action was commenced in the Middle District of Georgia, and was thereafter transferred to MDL No. 2326, *In re: Boston Scientific Corp. Pelvic Repair System Products Liability Litigation*; and the *Garcia* action is in MDL No. 2187, *In re: C.R. Bard, Inc., Pelvic Repair System Products Liability Litigation*.

<sup>5</sup> By separate order, we are granting Coloplast's motion for creation of a separate, Coloplast-specific MDL (MDL No. 2387, *In re: Coloplast Corp. Pelvic Support Systems Products Liability Litigation*), and centralizing that litigation in the Southern District of West Virginia. At oral argument in MDL No. 2387, counsel for plaintiffs moving to expand the scope of MDL No. 2004 acknowledged that creation of a separate Coloplast MDL might be warranted, but argued that in that event, the litigation should be centralized in the Middle District of Georgia, where, of course, MDL No. 2004 is pending. For the reasons set forth in a separate order that we are issuing in MDL No. 2387, we believe the Southern District of West Virginia is a more appropriate choice for transferee district.

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IT IS FURTHER ORDERED that the motion to expand the scope of MDL No. 2004 is denied.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written above a horizontal line.

John G. Heyburn II  
Chairman

Kathryn H. Vratil  
Barbara S. Jones  
Marjorie O. Rendell

W. Royal Furgeson, Jr.  
Paul J. Barbadoro

**IN RE: MENTOR CORP. OBTAPE TRANSOBTURATOR  
SLING PRODUCTS LIABILITY LITIGATION**

MDL No. 2004

**SCHEDULE A**

Western District of Missouri

Melissa M. Renaud, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00465

Mildred C. Watts, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00466

Alvonia B. Fisher, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00467

**IN RE: MENTOR CORP. OBTAPE TRANSOBTURATOR  
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MDL No. 2004

**SCHEDULE B**

Middle District of Florida

Denise Jean D'Agaro Jacobs, et al. v. Mentor Corporation, et al., C.A. No. 8:10-02429  
Rhonda Lariscy, et al. v. Mentor Worldwide, LLC, C.A. No. 8:11-02377  
Mary Joe White, et al. v. Coloplast Corporation, C.A. No. 8:12-00061

Northern District of Illinois

Gladys Marrero, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 1:12-01829  
Martha Gustafson, et al. v. Coloplast, Inc., et al., C.A. No. 1:12-03292

Southern District of Illinois

Ann M. Williams, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 3:12-00321

District of Kansas

Patricia Purvis v. Mentor Worldwide, LLC, et al., C.A. No. 2:12-02212

Eastern District of Missouri

Lois Wolz, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00698

Western District of Missouri

Melissa M. Renaud, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00465  
Mildred C. Watts, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00466  
Alvonia B. Fisher, et al. v. Mentor Worldwide, LLC, et al., C.A. No. 4:12-00467

Eastern District of Pennsylvania

June C. Hess v. Mentor Worldwide, LLC, et al., C.A. No. 2:12-01919

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MDL No. 2004 Schedule B (Continued)

Southern District of West Virginia

Barbara Lucas, et al. v. Ethicon, Inc., et al., C.A. No. 2:12-00515

Laurie Forbes v. Boston Scientific Corporation, et al., C.A. No. 2:12-00792

Dolores Garcia v. C.R. Bard, Inc., et al., C.A. No. 2:12-00964