

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: AMERICAN MEDICAL SYSTEMS, INC.,
PELVIC REPAIR SYSTEM PRODUCTS
LIABILITY LITIGATION**

MDL No. 2325

TRANSFER ORDER

Before the Panel: Plaintiffs in the actions listed on Schedule A move under Panel Rule 7.1 to vacate our order conditionally transferring the actions to MDL No. 2325. The AMS defendants¹ oppose the motion to vacate.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions transferred to MDL No. 2325, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiffs do not dispute that these actions share questions of fact with MDL No. 2325. Like many of the already-centralized actions, these actions involve factual questions arising from allegations that AMS and related entities defectively designed, manufactured, and marketed pelvic surgical mesh products, resulting in serious injuries, and that defendants failed to provide appropriate warnings and instructions regarding the risks and dangers posed by the devices. *See In re: Am. Med. Sys., Inc., Pelvic Repair Sys. Prods. Liab. Litig., et al.*, 844 F. Supp. 2d 1359 (J.P.M.L. 2012).

In support of their motion to vacate, plaintiffs argue that transfer is prohibited by the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d)(11)(C)(i), which bars transfer of an action removed on mass action grounds, absent a request by a majority of the plaintiffs therein. The Panel has determined that actions removed pursuant to the mass action provision plus other jurisdictional grounds are transferrable under Section 1407. *See In re: Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 939 F. Supp. 2d 1376, 1381 (J.P.M.L. 2013); *In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, MDL No. 2502, 2014 WL 10790383, at *1 (J.P.M.L. Jun. 6, 2014). Plaintiff relies upon the Panel's decision in *In re: Syngenta AG MIR162 Corn Litigation*, in which we declined to transfer an action "removed exclusively" as a CAFA mass action. *See Order Vacating Conditional Transfer Order*, MDL No. 2591, ECF No. 666, at 3

¹ American Medical Systems, Inc. (AMS); American Medical Systems, LLC; American Medical Systems Holdings, Inc.; Astora Women's Health LLC; Astora Women's Health Holdings, LLC; Astora Women's Health, Inc.; Astora Holdings, LLC; Endo Pharmaceuticals Inc.; and Endo Health Solutions Inc.


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(J.P.M.L. Aug. 5, 2016). Plaintiffs argue that the other grounds asserted in the AMS defendants' notice of removal of these actions are without merit. But the Panel does not have the authority to review the reasonableness of a defendant's grounds for removal. *See In re: Lipitor*, 2014 WL 10790383, at *1. Jurisdictional issues do not present an impediment to transfer, as plaintiffs can present these arguments to the transferee judge. *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiffs also argue that transfer would cause them delay and inconvenience. But as the Panel regularly holds, while it might inconvenience some parties, transfer of an action is appropriate if it furthers the expeditious resolution of the litigation taken as a whole. *See, e.g., In re: IntraMTA Switched Access Charges Litig.*, 67 F. Supp. 3d 1378, 1380 (J.P.M.L. 2014).

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Southern District of West Virginia and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance

Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

**IN RE: AMERICAN MEDICAL SYSTEMS, INC.,
PELVIC REPAIR SYSTEM PRODUCTS
LIABILITY LITIGATION**

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SCHEDULE A

Southern District of California

VELARDE DE CORDOVA, ET AL. v. AMERICAN MEDICAL SYSTEMS, INC.,
ET AL., C.A. No. 3:17-01249

GAXIOLA, ET AL. v. AMERICAN MEDICAL SYSTEMS, INC., ET AL.,
C.A. No. 3:17-01250

JONES, ET AL. v. AMERICAN MEDICAL SYSTEMS, INC., ET AL.,
C.A. No. 3:17-01251

WOLZEN, ET AL. v. AMERICAN MEDICAL SYSTEMS, INC., ET AL.,
C.A. No. 3:17-01253