

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:* Defendant LifeCell Corporation (LifeCell) in the Eastern District of New York action (*Whaley*), listed on Schedule A, moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2325. Defendant American Medical Systems, Inc. (AMS) opposes the motion to vacate.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously 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. Like many of the already-centralized actions, this action involves 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).

LifeCell argues that, because the *Whaley* complaint includes multiple plaintiffs and multiple defendant manufacturer groups without specifying the products implanted in each plaintiff, it is impossible to know if a product at issue in MDL No. 2325 is involved in *Whaley* and, therefore, transfer is inappropriate. Despite LifeCell's understandable concerns, we are convinced that transfer is the better option. Given that many, if not all, pelvic mesh products manufactured by AMS are at issue in MDL No. 2325 and it is named as a defendant in *Whaley*, it is likely that at least one of the plaintiffs was implanted with a relevant product. LifeCell argues that *Whaley* should remain in the transferor court to determine which product each plaintiff received. AMS argues that the transferee court's procedures place the burden of narrowing the allegations in a complaint on the plaintiffs, and we agree that using these procedures is far more efficient than having all parties brief the issue and await a ruling by the transferor court.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the

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

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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
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

**IN RE: AMERICAN MEDICAL SYSTEMS, INC.,
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LIABILITY LITIGATION**

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SCHEDULE A

Eastern District of New York

WHALEY, ET AL. V. AMERICAN MEDICAL SYSTEMS, INC., ET AL.,
C.A. NO. 2:14-04275