

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: BOSTON SCIENTIFIC CORP.
PELVIC REPAIR SYSTEM PRODUCTS
LIABILITY LITIGATION**

MDL No. 2326

ORDER DENYING REMAND

Before the Panel: Plaintiffs in three actions (listed on Schedule A), which we previously transferred from two districts to MDL No. 2326, move under Panel Rule 10.3 for an order remanding their actions to their transferor courts. Responding defendant Boston Scientific Corp. (Boston Scientific) opposes the motion to vacate.

After considering the argument of counsel, we conclude that remand is not appropriate at this time, and therefore deny plaintiffs' motion. In considering the question of Section 1407 remand, we accord great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, given that he or she has supervised the day-to-day pretrial proceedings in the MDL. *See In re: Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977). A transferee judge's suggestion of remand to the Panel, *see* Panel Rule 10.1(b), obviously is an indication that he or she perceives his or her role under Section 1407 to have ended. *See In re: Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008) (quoting *In re: Holiday Magic*, 433 F. Supp. at 1126). Here, Judge Joseph R. Goodwin of the Southern District of West Virginia has denied plaintiffs' request for such a suggestion. Without a suggestion of remand, a party advocating Section 1407 remand "bears a strong burden of persuasion." *In re: Holiday Magic*, 433 F. Supp. at 1126.

In requesting remand, plaintiffs argue that discovery in these actions is complete, and that it would be more appropriate for the transferor courts to address the remaining pretrial motions, which are fully briefed. Plaintiffs have not met their burden of showing that pretrial proceedings are essentially complete, or that continued centralization would not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. We are persuaded that the pretrial motions pending in these cases share common issues with actions remaining in the MDL and thus would be more efficiently addressed by the transferee court.

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IT IS THEREFORE ORDERED that the motion for Section 1407 remand of these actions is denied.

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

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SCHEDULE A

Middle District of Tennessee

PARKER v. BOSTON SCIENTIFIC CORP., C.A. No. 3:12-00294

District of Utah

STEWART, ET AL. v. BOSTON SCIENTIFIC CORP., C.A. No. 2:12-00647
HOFFMAN v. BOSTON SCIENTIFIC CORP., C.A. No. 2:12-00746