

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

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

MDL No. 2326

**TRANSFER ORDER**

**Before the Panel:** Plaintiffs in the action listed on Schedule A (*Stokely*) move under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2326. Defendant Boston Scientific Corp. (Boston Scientific) 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. 2326, 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. The actions encompassing MDL No. 2326 involve factual questions arising from allegations that Boston Scientific 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: Boston Scientific Corp., Pelvic Repair Sys. Prods. Liab. Litig., et al.*, 844 F. Supp. 2d 1359 (J.P.M.L. 2012).

Plaintiffs do not dispute that their product liability claims against Boston Scientific share questions of fact and law with the actions in MDL No. 2326. But they argue that their action is unique because they also bring medical negligence claims against Ms. Stokely's healthcare providers. Plaintiffs also argue that subject matter jurisdiction is lacking, and that transfer would be inconvenient to plaintiffs.

We are not persuaded that the existence of plaintiffs' medical negligence claims should preclude transfer. There are many claims against healthcare defendants in the various pelvic mesh MDLs pending in the Southern District of West Virginia, including MDL No. 2326. *Cf.* Transfer Order (*Malcolm*), MDL No. 2327, ECF No. 1311, at p. 2 (J.P.M.L. Oct. 17, 2013) ("There are numerous medical negligence claims pending in MDL No. 2327 against various healthcare defendants, most of whom are not named in more than one action."). Indeed, "MDLs involving medical devices often include similar claims against healthcare defendants." *In re: Bard IVC Filters Prods. Liab. Litig.*, MDL No. 2641, Transfer Order, ECF No. 230, at p. 2 (J.P.M.L. Feb. 4, 2016). Furthermore, Section 1407 transfer "does not require a complete identity or even majority of common factual and legal issues as a prerequisite to centralization." *See In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010).

-2-

As to plaintiffs' assertion that subject matter jurisdiction is lacking, the Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present these arguments to the transferee judge.<sup>1</sup> *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). We also are not convinced that plaintiffs' purported inconvenience should prevent transfer, since, as we often have held, while transfer of a particular action might inconvenience some parties to that action, such a transfer often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re: Crown Life Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

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

---

<sup>1</sup> The *Stokely* plaintiffs have not yet filed a motion to remand to state court.

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

MDL No. 2326

**SCHEDULE A**

Eastern District of Texas

STOKELY v. CUNNINGHAM, ET AL., C.A. No. 1:16-00139