

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 Middle District of Florida action (*Turner*) and the five Eastern District of Missouri actions listed on Schedule A move under Panel Rule 7.1 to vacate our order conditionally transferring the actions to MDL No. 2326. Defendant Boston Scientific Corp. (Boston Scientific) opposes the motions to vacate.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions 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).

Moving plaintiffs in the Eastern District of Missouri actions do not dispute that their actions share questions of fact with MDL No. 2326. Rather, they argue that these actions do not belong in federal court, and that transfer would cause plaintiffs inconvenience and prejudice. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as the parties can present these arguments to the transferee judge.¹ *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 makes transfer inappropriate. 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).

* Judge Marjorie O. Rendell took no part in the decision of this matter.

¹ Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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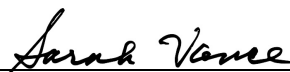
Plaintiff in the *Turner* action alleges that (1) Boston Scientific used a “counterfeit” resin in its pelvic mesh products, which it smuggled out of China; (2) the resulting pelvic mesh products were made with substandard mesh; and (3) these pelvic mesh products have unknown or incompatible additives or chemicals, which have caused women a variety of serious health problems. Like the MDL No. 2326 actions, the *Turner* complaint alleges that Boston Scientific defectively designed, manufactured, and marketed its pelvic surgical mesh products, resulting in serious injuries, and that Boston Scientific failed to provide appropriate warnings and instructions regarding the risks and dangers posed by the devices. As other plaintiffs in MDL No. 2326 do, the *Turner* plaintiff alleges the mesh causes an “immune reaction,” allows bacteria to adhere, can “contract or shrink inside the body,” “injure major nerve routes in the pelvic region,” can “creep,” “elongate,” or “deform,” has a “propensity . . . for degradation or fragmentation,” and causes “hyper-inflammatory responses.”

Plaintiff does not dispute that her product liability claims share questions of fact with the product liability claims in MDL No. 2326. But she argues that her action does not share sufficient questions of fact with the MDL No. 2326 actions to warrant transfer because she also alleges claims against defendants not present in the MDL regarding the alleged conspiracy to smuggle counterfeit resin, use it to make pelvic mesh products, and market them as made with “authentic” resin. While the vast majority of actions in MDL No. 2326 do not concern this alleged conspiracy and use of “counterfeit” resin, there is at least one action pending in MDL No. 2326 that advances similar allegations. *See* Transfer Order (*Saldierna*), MDL No. 2326, ECF No. 1571 (J.P.M.L. Jun. 2, 2016). Moreover, discovery relating to these allegedly unique claims has taken place or is taking place in MDL No. 2326. Failure to transfer *Turner*, therefore, would result in the duplication of efforts that Section 1407 seeks to avoid. Plaintiff argues that *Saldierna* is distinguishable because the *Saldierna* plaintiff had filed a short form complaint in MDL No. 2326, and because the *Turner* complaint involves additional allegations and named defendants. While the *Turner* plaintiff has not filed a short form complaint in MDL No. 2326, she does advance personal injury claims that are substantially similar to those advanced by the MDL No. 2326 plaintiffs, and we find that there are efficiencies to be had in considering all such claims in a single forum for pretrial purposes. Furthermore, transfer does not require a complete identity of parties or factual or legal issues. *See In re: Bank of N.Y. Mellon Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1373 (J.P.M.L. 2012).

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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

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

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SCHEDULE A

Middle District of Florida

TURNER v. BOSTON SCIENTIFIC CORP., ET AL., C.A. No. 6:17-00338

Eastern District of Missouri

TOWESON, ET AL. v. BOSTON SCIENTIFIC CORP., ET AL., 4:17-01427

VIGEN, ET AL. v. BOSTON SCIENTIFIC CORP., ET AL., 4:17-01431

REEVES, ET AL. v. BOSTON SCIENTIFIC CORP., ET AL., 4:17-01436

GATHRIGHT, ET AL. v. BOSTON SCIENTIFIC CORP., ET AL., 4:17-01437

ELKING, ET AL. v. BOSTON SCIENTIFIC CORP., ET AL., 4:17-01466