

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

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

Dana Bergeron v. Donald Long, M.D., et al.,	)	
E.D. Texas, C.A. No. 1:13-00429	)	MDL No. 2326
Sharon Jennings-Welch, et al. v. Wisconsin Injured	)	
Patients and Families Compensation Fund, et al.,	)	
E.D. Wisconsin, C.A. No. 2:13-00644	)	

**TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiffs move to vacate our orders that conditionally transferred their actions to MDL No. 2326. Defendants Donald Long, M.D., and Donald Long, M.D., P.A. also have moved to vacate the Panel’s order as to the *Bergeron* action. Defendant Boston Scientific Corp. (Boston Scientific) opposes all motions to vacate. Defendants Ethicon, Inc. and Johnson & Johnson oppose the motion to vacate as to the *Jennings-Welch* action.

After considering all argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2326, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiffs do not dispute that their actions share questions of fact with MDL No. 2326. Like many of the already-centralized actions, *Bergeron* and *Jennings-Welch* involve factual questions arising from allegations that pelvic surgical mesh products manufactured by Boston Scientific were defectively designed, manufactured and marketed, resulting in serious injuries, and that defendants failed to provide appropriate warnings and instructions regarding the risks and dangers posed by the device. *See In re: Boston Scientific Corp. Pelvic Repair Sys. Prods. Liab. Litig., et al.*, 844 F. Supp. 2d 1359 (J.P.M.L. 2012).

In support of the motion to vacate, movants primarily argue that these actions were improperly removed and plaintiffs’ motions to remand to state court are pending. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiff can present

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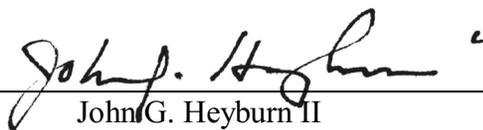
\* Judge Sarah S. Vance did not participate in the disposition of this matter.

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such arguments to the transferee judge.<sup>2</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).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions 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



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John G. Heyburn II  
Chairman

Kathryn H. Vratil  
Marjorie O. Rendell  
Lewis A. Kaplan

Paul J. Barbadoro  
Charles R. Breyer

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<sup>2</sup> 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 or other motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so. The transferor judge in *Bergeron* has declined to rule on the motion to remand and has issued a stay in the action.