

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

**IN RE: ETHICON, INC., PELVIC  
REPAIR SYSTEM PRODUCTS  
LIABILITY LITIGATION**

MDL No. 2327

**TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiffs in three Eastern Pennsylvania actions, listed on Schedule A, move to vacate our order conditionally transferring the actions to MDL No. 2327. Responding defendants Johnson & Johnson and Ethicon, Inc. (collectively Ethicon) oppose the motion to vacate.

After considering all argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2327, 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. 2327. Like many of the already-centralized actions, these three actions involve factual questions arising from allegations that pelvic surgical mesh products manufactured by Ethicon and related entities 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 devices. *See In re: Ethicon, Inc., 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 argue that these actions were improperly removed. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present such 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).

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\* Judge Paul J. Barbadoro and Judge Lewis A. Kaplan did not participate in the disposition of this matter.

<sup>1</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 judges in *Prochazka* and *Hubbard* have declined to rule on the motion to remand and have issued a stay in the actions.

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Plaintiffs also argue that transfer will result in dismissal of their claims against defendants Secant Medical, Inc. and Secant Medical, LLC (Secant), because they are not named in the master complaint in MDL No. 2327. As we recently held in transferring 45 similar actions to MDL No. 2327 over plaintiffs' objections,<sup>2</sup> the transferee court has held that plaintiffs filing claims against defendants not named in the master complaint cannot *directly file* their claims in the Southern District of West Virginia. Plaintiffs' claims against such defendants are free to proceed in the MDL once they are transferred by the Panel pursuant to Section 1407.

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

Marjorie O. Rendell  
Sarah S. Vance

Charles R. Breyer  
Ellen Segal Huvelle

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<sup>2</sup> See Transfer Order, MDL No. 2327 (J.P.M.L. Dec. 16, 2013); Transfer Order, MDL No. 2327 (J.P.M.L. Oct. 17, 2013).

**IN RE: ETHICON, INC., PELVIC  
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MDL No. 2327

**SCHEDULE A**

Eastern District of Pennsylvania

Sherry Sulser, et al. v. Ethicon Women's Health and Urology, et al., C.A. No. 2:13-05493  
Traci A. Prochazka, et al. v. Ethicon Women's Health and Urology, et al.,  
C.A. No. 2:13-05494  
Deborah Hubbard, et al. v. Ethicon Women's Health and Urology, et al.,  
C.A. No. 2:13-05503