

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, defendants Cook Inc., Cook Medical Inc., Vance Products Inc. (sued as “Cook Urological Incorporated”), Cook Biotech Inc., and Cook Group Inc. (collectively, Cook), and defendant in the Middle District of Georgia *Sitten* action, WL Gore & Assoc. (Gore) move to partially vacate our orders conditionally transferring the five actions listed on Schedule A to MDL No. 2327. Defendants Ethicon, Inc., and Johnson & Johnson (collectively, Ethicon) do not oppose the requests to separate and remand the claims against Cook and Gore from the claims against Ethicon. Responding plaintiffs in four of the actions oppose the motions and request transfer of each action in its entirety. Plaintiffs in the Western District of Missouri *Wynn* action oppose Cook’s motion to partially vacate and request transfer to MDL No. 2326 instead of MDL No. 2327, arguing that *Wynn* is one of two cases filed by plaintiffs involving the implantation of pelvic surgical mesh manufactured by Cook and Boston Scientific Corp.

MDL No. 2327 is one of five MDLs pending in the Southern District of West Virginia involving allegations of defects in surgical products manufactured by five separate defendant groups and used to treat pelvic organ prolapse and stress urinary incontinence. *See In re: Avaulta Pelvic Support Sys. Prods. Liab. Litig.*, MDL No. 2187, 746 F. Supp. 2d 1362 (J.P.M.L. 2010); *In re: Am. Med. Sys., Inc., Pelvic Repair Sys. Prods. Liab. Litig., et al.*, MDL Nos. 2325, 2326, and 2327, 844 F. Supp. 2d 1359 (J.P.M.L. 2012); *In re: Coloplast Corp. Pelvic Support Sys. Prods. Liab. Litig.*, MDL No. 2387, 883 F. Supp. 2d 1348, 1348 (J.P.M.L. 2012). The Panel has determined to create a sixth MDL in this district, involving similar claims against Cook. *See In re: Cook Med., Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, MDL No. 2440, Transfer Order, __ F. Supp. 2d __ (J.P.M.L. Jun. 11, 2013).

After considering all argument of counsel, we find that these five actions share questions of fact with actions in this litigation previously transferred to the Southern District of West Virginia, and that transfer of these actions in their entirety to MDL No. 2327 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Like many of the already-centralized actions, these actions involve factual questions arising from allegations that pelvic surgical mesh products manufactured by Ethicon 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 these devices. *See In re: Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig., et al.*, 844 F. Supp. 2d 1359 (J.P.M.L. 2012). Moreover, like the

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actions recently centralized in MDL No. 2440, these actions also involve factual questions arising from similar allegations regarding products manufactured by Cook. *See In re: Cook Med., Inc.*, MDL No. 2440, Transfer Order, ___ F. Supp. 2d ___ (J.P.M.L. Jun. 11, 2013).

In opposing inclusion of the claims against Cook, Cook argues that its products are not “pelvic mesh” and therefore, do not share sufficient questions of fact with the MDL No. 2327 actions to warrant transfer. As we state in our order creating MDL No. 2440, arguments that go to the merits of the claims against a particular defendant are more appropriately addressed to the transferee court. Given that the newly-established MDL involving similar Cook products is also pending in the Southern District of West Virginia, such arguments are immaterial.¹ We are confident that the transferee judge can continue to employ pretrial techniques to efficiently manage proceedings among the MDLs pending in the Southern District of West Virginia.

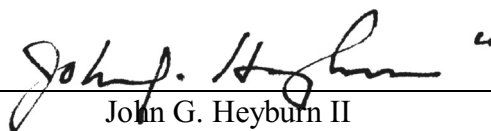
Gore advances similar arguments that its product is not made of “synthetic mesh” and that the Gore product was implanted in plaintiff at least a year before the other products at issue in the litigation. Unlike Cook, the *Sitten* action is the *only* action in which Gore is named as a defendant. However, there are many defendants involved in the pelvic mesh MDLs who are named in no more than one action, including many healthcare defendants. As with the claims against Cook and other manufacturer defendant groups, we are convinced that the nature of the injuries alleged in these multi-product/multi-defendant actions suggests that transfer of the case in its entirety is appropriate for ease of case management. Moreover, while it may be that the claims against Gore are easily separable or are not sufficiently related to the claims regarding pelvic repair products manufactured by other defendants, the transferee judge is in the best position to make that determination. *See In re Nat’l Football League Players’ Concussion Injury Litig.*, 842 F. Supp. 2d 1378, 1379 (J.P.M.L. 2012). If the transferee judge determines after close scrutiny that remand of any claims is appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Panel Rules 10.1-10.3.

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 occurring there in this docket.

¹ To the extent any of the actions on Schedule A name Cook as the first-named defendant, rather than Boston Scientific, and, pursuant to past practice in MDL Nos. 2187, 2325, 2326, 2327, and 2387, belong in the new MDL No. 2440 involving Cook products, the transferee judge can assign such actions to the proper MDL as has been his past practice.

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PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "John G. Heyburn II", is written above a horizontal line. The signature is cursive and includes a small mark at the end.

John G. Heyburn II
Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Charles R. Breyer

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan

**IN RE: ETHICON, INC., PELVIC
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SCHEDULE A

Middle District of Florida

Carol Sciarro v. Cook Group, Inc., et al., C.A. No., 6:13-00170

District of Montana

Marilyn M. Pittsley, et al. v. Johnson & Johnson, et al., C.A. No. 9:12-00196

Middle District of Georgia

Rebecca A. Sitten, et al. v. Johnson & Johnson, et al., C.A. No. 5:13-00045

Western District of Missouri

Kathleen Holland, et al. v. Cook Group, Inc., et al., C.A. No. 4:13-00155

Melinda Wynn, et al v. Cook Group, Inc., et al., C.A. No. 4:13-00156