

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: BIOMET M2A MAGNUM HIP IMPLANT
PRODUCTS LIABILITY LITIGATION**

MDL No. 2391

TRANSFER ORDER

Before the Panel: Plaintiff in the Northern District of Ohio action (*Murphy*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring *Murphy* to MDL No. 2391. Defendants¹ oppose the motion.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2391, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization. In that order, we held that the Northern District of Indiana was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged injuries from Biomet’s M2a Magnum and M2a-38 hip implant products. *See In re: Biomet M2A Magnum Hip Implant Prods. Liab. Litig.*, 896 F. Supp. 2d 1339 (J.P.M.L. 2012). Plaintiff originally filed a personal injury action in the MDL in which she made allegations about the design, manufacture, marketing and implantation of the Biomet M2a Magnum hip implant components she received. *See Murphy v. Biomet, et al.*, N.D. Indiana, C.A. No. 13-cv-284. Plaintiff states in her current action that she agreed to participate in the MDL settlement, and anticipated receiving a base value of \$190,000, but Biomet—allegedly without “good cause” under the agreement—deviated from that amount. Plaintiff then brought the instant breach of contract action.

Plaintiff opposes transfer, arguing that including *Murphy* in the MDL will expand the scope of the MDL proceedings to include contract claims and disputes about the settlement agreement. These arguments are factually incorrect. The MDL already includes similar claims. In fact, in the past several months, the transferee judge has addressed similar settlement-related claims of five plaintiffs.² Rather

¹ Biomet Orthopaedics, LLC; Biomet, Inc.; Biomet U.S. Reconstruction, LLC and Biomet Manufacturing, LLC (collectively Biomet).

² *See Meyer v. Biomet, Inc., et al.*, C.A. No. 3:13-CV-142, 2015 WL 1534455 (N.D. Ind., Apr. 6, 2015) (interpreting the MSA, including the phrase “good cause,” to mean that plaintiffs were required to pursue mediation or proceed to trial once Biomet revoked its settlement offer.); *In re Biomet M2a Magnum Hip Implant Prods. Liab. Litig.*, C.A. Nos. 3:14-CV-1505, 3:14-CV-737, No. 3:14-CV-1434, 2015 WL 1319138 (N.D. Ind. Mar. 23, 2015) (denying three motions to enforce settlement); *Gregory v. Biomet, Inc., et al.*, C.A. No. 3:14-CV-1112 (N.D. Ind. Apr. 23, 2015)

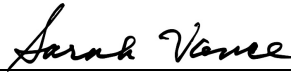
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than expanding the scope of the MDL, transferring *Murphy* will ensure that disputes under the settlement agreement are decided consistently and that all MDL personal injury plaintiffs who elect to participate in the settlement agreement are treated similarly.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Northern District of Indiana and, with the consent of that court, assigned to the Honorable Robert L. Miller, Jr., 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

²(...continued)

(“Whether Biomet had ‘good cause’ to contest Ms. Gregory’s categorization of her case is an issue for a mediator to decide, not the court. Paragraph 2(d) of the Settlement Agreement specifically provides that “[a]ll cases where the parties disagree as to the value will be mediated . . .”).

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PRODUCTS LIABILITY LITIGATION**

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SCHEDULE A

Northern District of Ohio

MURPHY v. BIOMET, INC., ET AL., C.A. No. 1:15-492