

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:** Plaintiffs in two actions listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring their respective actions to MDL No. 2391. Defendants<sup>1</sup> oppose the motion.

After considering the argument of counsel, we find these actions involve 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). These actions involve injuries that plaintiffs suffered allegedly as a result of receiving Biomet M2a-Magnum hip implant components, and they clearly fall within the MDL’s ambit.

Plaintiff in the District of Massachusetts *Salemy* action opposes transfer, arguing that federal jurisdiction is lacking over her action. Plaintiff also argues that, in a prior action (the *Salemy* action now before us is plaintiff’s third case regarding her Biomet device), Biomet refused to value her claims properly under the terms of the MDL master settlement agreement. *See generally Salemy v. Biomet*, N.D. Indiana, C.A. No. 14-654. Along with personal injury claims in her current case, plaintiff brings a breach of contract claim regarding the settlement value assigned to her previous MDL case. These are insufficient grounds to avoid transfer. Further, transfer of *Salemy* “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.” *See* Transfer Order, *Murphy v. Biomet, Inc., et al.*, N.D. Ohio, C.A. No. 1:15-492, MDL No. 2391, J.P.M.L. CM/ECF doc. 917 (June 8, 2015). If plaintiff chooses to file a motion to remand in her current action, she can present it to the transferee judge.

Plaintiff in the Eastern District of Louisiana *Moise* action asserts that transfer will be inefficient, given that the MDL master settlement agreement does not apply to his case. While it may be true that the settlement does not apply to *Moise*, numerous cases similar to *Moise* remain in the MDL. We have

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<sup>1</sup> Biomet Orthopaedics, LLC; Biomet, Inc.; and Seacoast Biomet, Inc. (collectively Biomet).

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not conditioned transfer of factually related actions to this MDL on whether plaintiffs can participate in the settlement agreement offered to some parties. Further, on June 1, 2015, the transferee judge appointed a second Plaintiffs' Steering Committee to lead these remaining cases. Given the factual relation of *Moise* to the pending MDL actions, transfer is appropriate.

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



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Sarah S. Vance

Chair

Marjorie O. Rendell

Lewis A. Kaplan

R. David Proctor

Charles R. Breyer

Ellen Segal Huvelle

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

MDL No. 2391

**SCHEDULE A**

Eastern District of Louisiana

MOISE v. BIOMET ORTHOPEDICS, LLC, C.A. No. 2:15-1023

District of Massachusetts

SALEMY v. BIOMET, INC., ET AL., C.A. No. 1:15-11502