

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

Lori Ann Davis v. Biomet Orthopaedics, LLC, et al.,)	
D. Maryland, C.A. No. 1:12-03738)	
Gregg Mattern, et al. v. Biomet, Inc., et al.,)	MDL No. 2391
D. New Jersey, C.A. No. 2:12-04931)	

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff in a District of Maryland action moves to vacate our order that conditionally transferred the action (*Davis*) to MDL No. 2391. Additionally, plaintiffs in a District of New Jersey action move, pursuant to 28 U.S.C. § 1407(c), for transfer of this action (*Mattern*), which involves a Biomet M2a-Taper hip implant that is not currently involved in the MDL proceedings, to the Northern District of Indiana for inclusion in MDL No. 2391. Plaintiff in an additional M2a-Taper action, *Popick v. Biomet, Inc., et al*, D. Nevada, C.A. 2:13-cv-172, supports the motion to transfer. Defendants¹ oppose both motions.

After considering all 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.*, 2012 WL 4753360 (J.P.M.L. Oct. 2, 2012). MDL plaintiffs’ claims focus primarily upon the metal-on-metal design of the M2a Magnum and the M2a-38 hip implants and their alleged propensity to generate high levels of metal ions, cause metallosis in the surrounding tissue and/or fail early. The *Davis* action now before us involves injuries arising from the design, manufacture, marketing and implantation of Biomet M2a Magnum hip implant components, and clearly falls within the MDL’s ambit.

Plaintiff in *Davis* does not dispute that her action shares questions of fact with actions pending in MDL No. 2391. Plaintiff instead bases her arguments against transfer primarily on the pendency of a motion to remand her action to state court. Plaintiff can present the motion for remand to the

* Judge John G. Heyburn II took no part in the decision of this matter.

¹ Biomet Fairlawn, LLC; Biomet Fairlawn, LP; Biomet Orthopedics, LLC and Biomet, Inc. (collectively Biomet).

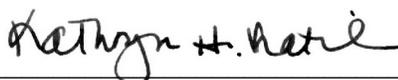
-2-

transferee judge.² See, e.g., *In re Ivy*, 901 F.2d 7, 9 (2nd Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

The question of whether to expand the scope of the MDL proceedings by including the M2a-Taper product involved in *Mattern* is a close one. On balance, we are of the opinion that *Mattern* – which involves the M2a-Taper hip implant, a predecessor product of the two hip implant products at issue in the centralized proceedings – shares sufficient questions of fact to merit inclusion in the MDL proceedings at this time. However, the transferee judge can further refine the issues and closely scrutinize the arguments of the parties regarding whether including the M2a-Taper in the MDL will benefit the conduct of the centralized proceedings. If he decides that continued inclusion of actions involving the M2a-Taper is appropriate, then the transferee judge may wish to employ any number of pretrial techniques – such as establishing separate discovery or motion tracks – to efficiently manage this litigation. On the other hand, if the transferee judge deems remand of any claims or actions advisable – or, more specifically, the exclusion of actions involving certain devices such as the M2a-Taper appropriate – then he may accomplish this by filing a suggestion of remand to the Panel. See Panel Rule 10.1(b). We are confident in the transferee judge’s ability to streamline pretrial proceedings in all actions, while concomitantly directing the appropriate resolution of all claims.

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



Kathryn H. Vratil
Acting Chairman

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

Paul J. Barbadoro
Charles R. Breyer

² Panel Rule 2.1(d) expressly provides that 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 motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon the remand motion generally has adequate time in which to do so.