

**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 Western District of Arkansas action listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring his action to MDL No. 2391. Defendants<sup>1</sup> oppose the motion.

After considering the argument of counsel, we find that 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). This action involves a dispute over the settlement reached in a previous case plaintiff brought against Biomet in the Northern District of Indiana<sup>2</sup> regarding injuries that plaintiff suffered allegedly as a result of receiving Biomet M2a-38 hip implant components, and this dispute clearly falls within the MDL's ambit.

Plaintiff asserts that Section 1407 permits us to transfer a case brought by a plaintiff only once and that pretrial proceedings have concluded regarding the injuries suffered from implantation of his Biomet hip. The text of Section 1407 does not support plaintiff's interpretation. Instead, it focuses our inquiry on whether the action to be transferred shares common factual questions with other actions, and whether transfer will serve the convenience of the parties and witnesses and further the just and efficient conduct of the litigation as a whole. *See* 28 U.S.C. § 1407(a). The statutory requirements for transfer are satisfied in these circumstances. Plaintiff does not dispute that he was implanted with a Biomet hip that is the subject of this MDL and that he settled his action in the context of the MDL. Finally, our practice in this very docket supports transfer of successive

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\* Judges Marjorie O. Rendell and Lewis A. Kaplan did not participate in the decision of this matter.

<sup>1</sup> Biomet Orthopedics, LLC; Biomet, Inc.; Biomet U.S. Reconstruction, LLC; and Biomet Manufacturing, LLC (collectively Biomet).

<sup>2</sup> *See Eastman v. Biomet, Inc., et al.*, N.D. Indiana, C.A. No. 3:14-cv-771.

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actions brought by plaintiffs who challenge the value of their settlement under the MDL Master Settlement Agreement.<sup>3</sup> Transfer of *Eastman* “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).

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



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Sarah S. Vance  
Chair

Charles R. Breyer  
R. David Proctor

Ellen Segal Huvelle  
Catherine D. Perry

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<sup>3</sup> See, e.g., Transfer Order, MDL No. 2391, J.P.M.L. doc. 932 at 1 (“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.”).

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

MDL No. 2391

**SCHEDULE A**

Western District of Arkansas

EASTMAN v. BIOMET ORTHOPEDICS, LLC, ET AL., C.A. No. 1:15-1056