

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: MIRENA IUD PRODUCTS LIABILITY
LITIGATION**

MDL No. 2434

TRANSFER ORDER

Before the Panel:* Plaintiff in the action listed on Schedule A (*Davis*) moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2434. Defendant Bayer HealthCare Pharmaceuticals Inc. opposes the motion to vacate.¹

After considering the argument of counsel, we find this action involves common questions of fact with the actions transferred to MDL No. 2434, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiff does not dispute that her action shares questions of fact with MDL No. 2434. Like many of the already-centralized actions, *Davis* involves factual questions concerning the alleged risk of uterine perforation and migration associated with the Mirena IUD and the adequacy of the product's warning label with respect to those risks. *See In re: Mirena IUD Prods. Liab. Litig.*, 938 F. Supp. 2d 1355, 1356 (J.P.M.L. 2013).

In support of her motion to vacate, plaintiff has submitted the arguments set forth in her motion for remand to state court. Thus, her objections to transfer rest on the argument that federal subject matter jurisdiction is lacking and that she is entitled to remand to state court. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present these arguments to the transferee judge.² *See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Additionally, to the extent plaintiff asserts the Panel itself must decide the existence of subject matter jurisdiction or order remand to state court, she is incorrect. It is well-established that "Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand." *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).

* Judge Lewis A. Kaplan took no part in the decision of this matter.

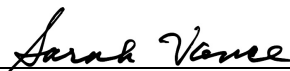
¹ The other named defendants in *Davis* are Bayer Oy, Bayer Pharma AG, Dr. Sarah K. Happe, and Rush University Medical Center. They did not file a response.

² Moreover, under Panel Rule 2.1(d), 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 generally has adequate time to rule on a remand motion if it chooses to do so.

-2-

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Cathy Seibel for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

**IN RE: MIRENA IUD PRODUCTS LIABILITY
LITIGATION**

MDL No. 2434

SCHEDULE A

Northern District of Illinois

DAVIS v. BAYER HEALTHCARE PHARMACEUTICALS, INC., ET AL.,
C.A. No. 1:17-02060