

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

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

MDL No. 2434

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiffs in the action listed on Schedule A (*Roberts*) move under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2434. Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer Pharma AG, and Bayer Oy oppose the motion to vacate and support transfer.

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. Plaintiffs do not dispute that their action shares questions of fact with MDL No. 2434. Like many of the already-centralized actions, *Roberts* 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). The transferee court has presided over substantial discovery, including completion of generic fact and expert discovery, and issued significant pretrial rulings on *Daubert* motions and an omnibus summary judgment motion, which currently are on appeal.<sup>1</sup> The court also has issued a case management order governing cases transferred to the MDL during the appeal.<sup>2</sup> These common pretrial proceedings in the MDL undoubtedly will serve the just and efficient conduct of the *Roberts* action.

In support of the motion to vacate, plaintiffs assert a number of arguments concerning their pending motion for remand to state court. Plaintiffs principally argue that transfer will be unjust because, under the operative case management order, their action will be conditionally dismissed without prejudice while the appeals are pending and, consequently, there is no mechanism in the MDL for their remand motion to be heard. They also assert that the summary judgment ruling will

---

\* Judge Marjorie O. Rendell took no part in the decision of this matter.

<sup>1</sup> *See In re: Mirena IUD Prods. Liab. Litig.*, 169 F. Supp.3d 396 (S.D.N.Y. 2016) and 202 F. Supp. 3d 304 (S.D.N.Y. 2016).

<sup>2</sup> *See In re: Mirena IUD Prods. Liab. Litig.*, No. 13-md-2434, Case Management Order Re: Cases Transferred to MDL During Appeal, Doc. No. 3279 (S.D.N.Y. Nov. 14, 2016) (“Case Management Order Re: Cases Transferred to MDL During Appeal”).

-2-

be applied to their case prior to resolution of their remand motion. But as defendants point out, plaintiffs are free to petition the transferee court to rule on their remand motion while the appeals are pending. Moreover, the case management order clearly provides that plaintiffs will have an opportunity to submit briefing before the rulings of concern are applied to their case.<sup>3</sup> Plaintiffs' assertions of injustice apparently are little more than complaints about delay of their action while the appeals are pending. We have found that, while transfer of an action might result in some delay to that action, transfer often is necessary to further the expeditious resolution of the litigation taken as a whole. *See In re: Crown Life Ins. Co. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

Plaintiffs further argue that transfer is not appropriate on the grounds that defendants' removal of their action was patently improper, and the transferor court should be provided an opportunity to rule on the pending remand motion. 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.<sup>4</sup> *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, we regularly order transfer of actions over the objection that remand is required under applicable precedent. Transfer in these circumstances comports with the well-established principle 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).

Plaintiffs also argue that MDL No. 2434 is too procedurally advanced for this action to benefit from transfer. While the MDL undoubtedly is at an advanced stage, we conclude that transfer of *Roberts* remains appropriate. Whether the continued inclusion of tag-along actions is appropriate is based upon a review of the status of the MDL proceedings and an assessment of the relative merits of transferring additional cases. *See In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F. Supp. 2d 1371, 1372 (J.P.M.L. 2009). Here, the transferee judge made a well-considered determination that the MDL should remain open while the appeals are pending and entered a case management order governing actions transferred to the MDL during the appeal. We believe that the transferee court's continued management of tag-along actions is appropriate in these circumstances.

---

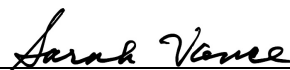
<sup>3</sup> *See* Case Management Order Re: Cases Transferred to MDL During Appeal ¶ 3.

<sup>4</sup> 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.

-3-

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

Charles R. Breyer  
Ellen Segal Huvelle  
Catherine D. Perry

Lewis A. Kaplan  
R. David Proctor

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

MDL No. 2434

**SCHEDULE A**

Eastern District of Missouri

ROBERTS, ET AL. v. BAYER HEALTHCARE PHARMACEUTICALS, INC., ET AL.,  
C.A. No. 4:17-01415