UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MIRENA IUD PRODUCTS LIABILITY LITIGATION MDL No. 2434

ORDER DENYING TRANSFER

Before the Panel:[*] Plaintiff and defendant Bayer HealthCare Pharmaceuticals, Inc. (Bayer) jointly move under 28 U.S.C. 1407(c) for transfer of the action listed on Schedule A (*Anderson*) to the Southern District of New York for inclusion in MDL No. 2434.

After considering the argument of counsel, we deny the motion for transfer. The actions originally centralized in this MDL involve factual questions arising from 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. *In re: Mirena IUD Prods. Liab. Litig.*, 938 F. Supp. 2d 1355, 1356 (J.P.M.L. 2013). The Panel has twice considered whether the scope of the MDL should be expanded to include actions alleging injury from the Mirena IUD other than uterine perforation or migration. We declined to do so. *See* Order Vacating Conditional Transfer Orders (*Baker, et al.*) at 1-2 (J.P.M.L. Aug. 7, 2013); Order Vacating Conditional Transfer Order (*Thompson*) at 1 (J.P.M.L. Oct. 16, 2013).

The parties argue that transfer of *Anderson* is appropriate because uterine perforation allegations are included in the complaint. But the focus of the action is fairly characterized as the birth defect and wrongful death claims on behalf of plaintiff's deceased daughter, who allegedly was born with fatal heart defects as a result of *in utero* exposure to Mirena. For example, the opening paragraph of the complaint characterizes *Anderson* as an action "to recover damages for the wrongful death of her daughter, those damages which survived her daughter's death, and to recover damages for personal injuries suffered as a result of Plaintiff being prescribed and using the defective and unreasonably dangerous product Mirena® (levonorgestrel-releasing intrauterine system)." *See* Compl. at 1. Additionally, the factual allegations center largely on the alleged birth defect risks posed by Mirena, which defendants allegedly have had notice of since at least 2005 but have not included on the product warning label.[1] Nothing in the record before the Panel indicates that MDL

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

[1] For example, the complaint alleges that "[d]efendants knew or should have known that the MIRENA® IUS posed an increased risk of congenital birth defects and other related conditions"; "[d]efendants were on notice, from at least 2005, of case reports involving the Mirena® IUS and congenital anomalies, including cases involving cardiac defects"; and "[t]he current MIRENA® IUS label remains deficient to adequately and accurately warn doctors and/or their patients of the

(continued...)

No. 2434 currently encompasses issues concerning Bayer's conduct with respect to those alleged birth defect risks. Inclusion of the *Anderson* action in MDL No. 2434 therefore would expand the scope of the MDL to encompass those issues. Given that generic discovery in MDL No. 2434 appears to be at an advanced stage, inclusion of actions alleging birth defect risks seems unlikely to produce significant efficiencies and may delay resolution of actions already progressing in the MDL.

In these circumstances, informal coordination of any overlapping discovery is preferable to transfer. Indeed, Bayer has represented that informal coordination of discovery is practicable in Mirena actions alleging other types of non-perforation injuries, to the extent discovery overlaps with discovery in MDL No. 2434. In particular, Bayer has noted its willingness to share the document discovery in the MDL subject to an appropriate protective order and cross-notice depositions in all related actions. Additionally, the *Anderson* plaintiff's counsel is involved in MDL No. 2434, and is well-situated to voluntarily coordinate any overlapping pretrial proceedings. Thus, informal coordination of *Anderson* with the MDL actions is both practicable and preferable.

IT IS THEREFORE ORDERED that the motion for transfer of the action listed on Schedule A is DENIED.

PANEL ON MULTIDISTRICT LITIGATION

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

[1](...continued)
increased risk of congenital anomalies that are seen in babies whose mothers retained the MIRENA® IUS during pregnancy." *See Anderson* Compl. ¶¶ 46-52.

IN RE: MIRENA IUD PRODUCTS LIABILITY LITIGATION MDL No. 2434

SCHEDULE A

District of New Jersey

ANDERSON v. BAYER HEALTHCARE PHARMACEUTICALS, INC., ET AL.,
C.A. No. 2:14-05607