

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

**IN RE: COOK MEDICAL, INC., PELVIC REPAIR  
SYSTEM PRODUCTS LIABILITY LITIGATION**

MDL No. 2440

**TRANSFER ORDER WITH SIMULTANEOUS  
SEPARATION AND REMAND OF CERTAIN CLAIMS**

**Before the Panel:**\* Plaintiffs in this Western District of Missouri action (*Mitchell*), listed on Schedule A, move under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2440. Defendant Covidien LP (Covidien) opposes the motion to vacate.

The actions in MDL No. 2440 involve factual questions arising from allegations that Cook Medical, Inc. (Cook) and related entities defectively designed, manufactured, and marketed pelvic surgical mesh products, resulting in serious injuries, and that defendants failed to provide appropriate warnings and instructions regarding the risks and dangers posed by the devices. *See In re: Cook Medical, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 949 F. Supp. 2d 1373 (J.P.M.L. 2013). In the *Mitchell* action, plaintiffs are two individuals who allege they were implanted with pelvic mesh products manufactured by the Covidien defendants and, as a result, suffered physical injuries. One of the plaintiffs—Karen R. Stoner—was implanted with a pelvic mesh product manufactured by Cook on the same date as a pelvic mesh product manufactured by Covidien. Ms. Stoner also asserted claims against Cook by directly filing an action against Cook in MDL No. 2440. Covidien argues that the claims against Cook and the claims against Covidien are related because Ms. Stoner was implanted with both products in the same procedure, and therefore, the cases should proceed together in MDL No. 2440.

Plaintiffs argue against transfer principally that (1) Pretrial Order #13 in MDL No. 2440 bars plaintiffs' claims against Covidien, and transfer would result in dismissal of plaintiffs' claims; (2) Covidien is not a defendant in MDL No. 2440; and (3) the pelvic mesh product implanted in Ms. Stoner that was manufactured by Covidien is a separate product from the Cook pelvic mesh product implanted in Ms. Stoner, and the claims against Cook are unrelated. We are not persuaded by these arguments.

Plaintiffs' argument that Pretrial Order #13 will bar their claims against Covidien is based upon a misreading of the pretrial order. In fact, plaintiffs insert language in their quotation of the order that changes its meaning. Pretrial Order #13 merely restricts plaintiffs to naming only Cook and other pelvic mesh MDL defendants when using the MDL No. 2440 short form complaint.

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\* Judge Charles R. Breyer took no part in the decision of this matter.

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Plaintiffs in actions transferred by the Panel under Section 1407 from another court are not required to file a short form complaint in the MDL if they name defendants not listed in the short form complaint or master complaint. *See* Pretrial Order #13, pp. 4-5, MDL No. 2440 (S.D. W. Va. Nov. 14, 2013).

In similar circumstances, the Panel transferred an action naming a defendant not otherwise a part of a pelvic mesh MDL when there was a separate action naming the MDL defendant already pending in the MDL. *See* Transfer Order (*Gay*), MDL No. 2327 (J.P.M.L. Oct. 17, 2013). In *Gay*, plaintiff requested transfer, and defendant LifeCell Corp. opposed transfer of the action principally because it did not name the MDL defendant. The reasons we found transfer appropriate in *Gay* apply here. Ms. Stoner was implanted with products manufactured by both Cook and Covidien at the same time, and she seeks to bring claims against both—similar to the other multi-product/multi-defendant actions pending in MDL No. 2440. Transfer is consistent with the Panel’s determination to keep the claims in multi-product/multi-defendant actions together in this MDL. Given that the products were implanted together, Ms. Stoner’s claims against Covidien will share common factual issues with her claims against Cook.

After considering the argument of counsel, we find Ms. Stoner’s claims involve common questions of fact with the actions previously transferred to MDL No. 2440, 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. On the other hand, Ms. Mitchell—the other plaintiff to this action—has not alleged she was implanted with a pelvic mesh product manufactured by Cook. Her claims therefore do not involve common questions of fact with the actions previously transferred to MDL No. 2440.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Southern District of West Virginia and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for inclusion in the coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED THAT plaintiff Joyce L. Mitchell’s claims are separated and simultaneously remanded, under 28 U.S.C. § 1407(a), to the Western District of Missouri.

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PANEL ON MULTIDISTRICT LITIGATION

*Sarah Vance*

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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Ellen Segal Huvelle  
Catherine D. Perry

Lewis A. Kaplan  
R. David Proctor

**IN RE: COOK MEDICAL, INC., PELVIC REPAIR  
SYSTEM PRODUCTS LIABILITY LITIGATION**

MDL No. 2440

**SCHEDULE A**

Western District of Missouri

MITCHELL, ET AL. v. COVIDIEN, PLC, ET AL., C.A. No. 4:14-00636