

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ETHICON PHYSIOMESH FLEXIBLE
COMPOSITE HERNIA MESH
PRODUCTS LIABILITY LITIGATION**

MDL No. 2782

TRANSFER ORDER

Before the Panel:* Plaintiff in the *Gilmore* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2782. Defendants Ethicon, Inc., and Johnson & Johnson oppose the motion to vacate.

After considering the argument of counsel, we find that *Gilmore* involves common questions of fact with the actions transferred to MDL No. 2782, 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. No party disputes that *Gilmore* shares questions of fact with MDL No. 2782. Like many of the already-centralized actions, it involves factual questions arising out of allegations that defects in defendants' Physiomes mesh can lead to complications when implanted in patients. *See In re: Ethicon Physiomes Flexible Composite Hernia Mesh Prods. Liab. Litig.*, 254 F. Supp. 3d 1381 (J.P.M.L. 2017). In fact, plaintiff alleges that the effects of the mesh on the decedent "are consistent with the hundreds if not thousands of other lawsuits filed against [Ethicon] for their defective products." *Gilmore* Compl. at ¶ 22.

In support of the motion to vacate, plaintiff argues that removal of her action was improper, and the transferor court should decide her motion for remand to state court. Jurisdictional issues do not present an impediment to transfer, as plaintiff can present these arguments to the transferee judge.¹ *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).

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

¹ 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.

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Northern District of Georgia and, with the consent of that court, assigned to the Honorable Richard W. Story 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

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SCHEDULE A

Southern District of Indiana

GILMORE v. HOWARD, ET AL., C.A. No. 1:18-00087