

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2325

ORDER DENYING TRANSFER

Before the Panel: Intervenor plaintiff American Medical Systems, Inc. (AMS) in the Central District of California action listed on Schedule A (*Federal*) moves under 28 U.S.C. § 1407(c) to transfer the action to MDL No. 2325. Plaintiff Federal Insurance Co. (Federal) opposes transfer.

The actions involved in MDL No. 2325 arise from allegations that AMS 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: Am. Med. Sys., Inc., Pelvic Repair Sys. Prods. Liab. Litig., et al.*, 844 F. Supp. 2d 1359 (J.P.M.L. 2012). Of the almost 20,000 claims that have been involved in this MDL, a handful have included Caldera Medical, Inc. (Caldera) and its pelvic mesh products, which were manufactured under a licensing agreement between Caldera and AMS. The *Federal* action is a declaratory judgment action over insurance coverage brought by Caldera's insurer against Caldera and 23 proposed representatives of two classes of individuals who were implanted with certain Caldera pelvic mesh devices. AMS has intervened in *Federal*, arguing that Federal has a duty to defend AMS in the underlying pelvic mesh claims.

After considering the argument of counsel, we conclude that inclusion of this action in MDL No. 2325 is not necessary to achieve the just and efficient conduct of the litigation. AMS argues that resolution of *Federal* will require litigating the underlying pelvic mesh claims. But Federal has explicitly stated in its motion for class certification that it does not seek adjudication of the underlying pelvic mesh claims, but rather seeks an orderly apportionment of the proceeds from its policies.

AMS argues that Federal has a duty to defend AMS in part due to the licensing agreement between AMS and Caldera, which also is the alleged basis for AMS's liability in the MDL No. 2325 Caldera actions. AMS therefore argues that *Federal* shares factual questions with MDL No. 2325 involving the licensing agreement. We find that this limited factual overlap is not sufficient to warrant transfer. Caldera is involved in less than one percent of the MDL No. 2325 actions and, to date, MDL No. 2325 has not involved insurance coverage issues. The vast majority of the more than 2,000 claims pending against Caldera are proceeding in California state court. Transfer would

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introduce unique facts and legal issues involving a peripheral defendant into one of the largest MDLs now pending. Litigating the insurance coverage issues in *Federal* would be time consuming in an already complex docket.

Finally, AMS argues that transfer would facilitate settlement of the underlying pelvic mesh actions. But “settlement of multidistrict litigation is a sometime by-product, not a statutory rationale, for transfer under Section 1407.” *In re: Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, Order Denying Transfer at p. 2 (J.P.M.L. Jun. 15, 2010). Indeed, as we held in *Chinese-Manufactured Drywall*, “[s]ettlement of the underlying products liability claims can proceed quite well without transfer of the insurance actions.” *Id.* We find that allowing *Federal* to proceed in California will produce the most convenient and efficient outcome for the parties.

IT IS THEREFORE ORDERED that the motion for transfer of this action is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

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R. David Proctor

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SCHEDULE A

Central District of California

FEDERAL INSURANCE CO. v. CALDERA MEDICAL, INC., ET AL.,
C.A. No. 2:15-00393