

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MIRENA IUD PRODUCTS LIABILITY LITIGATION

MDL No. 2434

ORDER DENYING TRANSFER

Before the Panel: Plaintiff moves under 28 U.S.C. 1407(c) for transfer of the action listed on Schedule A (*Weed*) to the Southern District of New York for inclusion in MDL No. 2434. Defendant Bayer HealthCare Pharmaceuticals, Inc. (Bayer) did not file a response.

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 considered on several occasions 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 repeatedly have declined to do so. *See* Order Denying Transfer (*Anderson*) at 1-2 (J.P.M.L. Feb. 6, 2015); 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).

Plaintiff argues that transfer of *Weed* is appropriate because uterine perforation and migration allegations are included in the complaint. But *Weed* also alleges that the Mirena IUD is defective based on the risk of birth defects posed by the hormonal component of the product. In particular, the complaint alleges that “the Mirena IUS is known to cause or contribute to severe and fatal developmental abnormalities and birth defects in the fetus, including but not limited to anencephaly and acalvaria, that most likely will result in stillbirth or the death of the child shortly after birth.” *See Weed* Compl. ¶¶ 25-26. We recently denied transfer of another action that asserted birth defect claims in conjunction with an alleged uterine perforation injury, explaining that MDL No. 2434 does not encompass birth defect risks, and “inclusion of actions alleging birth defect risks seems unlikely to produce significant efficiencies and may delay resolution of actions already progressing in the MDL.” *See* Order Denying Transfer (*Anderson*), at 2 (J.P.M.L. Feb. 6, 2015). That determination is equally applicable to *Weed*.

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. 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.

-2-

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
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

IN RE: MIRENA IUD PRODUCTS LIABILITY LITIGATION

MDL No. 2434

SCHEDULE A

Eastern District of Wisconsin

WEED v. BAYER HEALTHCARE PHARMACEUTICALS, INC., ET AL.,
C.A. No. 1:15-00273