

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MIRENA IUD PRODUCTS LIABILITY LITIGATION

Maria Oropeza v. Bayer Pharmaceuticals Corporation, et al.,)
E.D. Missouri, C.A. No. 4:13-01017) MDL No. 2434

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, Bayer HealthCare Pharmaceuticals, Inc. (“Bayer”) moves to vacate our order conditionally transferring this action to the Southern District of New York for inclusion in MDL No. 2434. Plaintiff opposes the motion to vacate.

The actions originally centralized in this MDL involve factual questions arising from “the alleged risks of uterine perforation and migration associated with Mirena and the adequacy of the product’s warning label” with respect to those risks. *In re: Mirena IUD Prods. Liability Litig.*, — F. Supp. 2d —, 2013 WL 1497304, at *1 (J.P.M.L. Apr. 8, 2013). The Panel recently considered whether the scope of the MDL should be expanded to include actions alleging other types of injury from the Mirena IUD, without regard to uterine perforation or migration. We declined to do so. *See Order Vacating Conditional Transfer Orders at 1-2* (J.P.M.L. Aug. 7, 2013).

The present motion raises the issue whether the *Oropeza* action is within the scope of the MDL. Bayer contends that the *Oropeza* action does not allege an injury from perforation or migration. Bayer acknowledges that the *Oropeza* complaint characterizes plaintiff’s injury as caused by “migration” of the Mirena IUD, but contends that the correct characterization is “partial expulsion,” which in Bayer’s view is unrelated to migration. Bayer thus contends that common discovery will be limited, if any. Plaintiff’s complaint, however, unequivocally alleges an injury from “migration” of the Mirena IUD, which, like other actions in MDL No. 2434, required a surgical removal.¹ Thus, her action will benefit from pretrial proceedings on the common factual issues concerning migration, and is appropriate for inclusion in MDL No. 2434. In the event that further litigation of plaintiff’s claims indicates the action will not benefit from common pretrial proceedings (as Bayer asserts), we encourage the transferee court to suggest remand in accordance with Panel

* Judge Sarah S. Vance took no part in the decision of this matter.

¹ The complaint alleges that plaintiff suffered “complications as a result of the Mirena IUD, including but not limited, migration and a subsequent surgical removal that occurred on July 1, 2011.” Compl. ¶ 35. In briefing before the Panel, plaintiff further alleges that the Mirena IUD “migrated post insertion . . . into the cervix with its arms in the lower uterine segment.” Pl.’s Opp’n, Doc. No. 291, at 2 (Aug. 28, 2013).

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Rule 10.1(b). See *In re: Mirena IUD Prods. Liability Litig.*, 2013 WL 1497304, at *1 (“Once discovery and other pretrial proceedings related to the common issues have been completed, the transferee judge may suggest Section 1407 remand of actions to transferor courts for more individual discovery and trial, if necessary.”)

After considering all arguments of counsel, we find that *Oropeza* involves common questions of fact with the actions previously transferred to MDL No. 2434, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. We further find that transfer of this action is appropriate for the reasons that we set out in our original order directing centralization in this docket. In that order, we held that the Southern District of New York was an appropriate Section 1407 forum for actions involving allegations relating to 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. Liability Litig.*, 2013 WL 1497304, at *1.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Cathy Seibel for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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