

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: JOHNSON & JOHNSON TALCUM POWDER
PRODUCTS MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2738

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: Plaintiff in the *Beasley Allen* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Beasley Allen* to the District of New Jersey for inclusion in MDL No. 2738. No party responded to the motion.

After considering plaintiff's arguments, we find that transfer of *Beasley Allen* under 28 U.S.C. § 1407 will not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the District of New Jersey was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that plaintiffs or their decedents developed ovarian cancer following perineal application of Johnson & Johnson talcum powder products (namely, Johnson's Baby Powder and Shower to Shower body powder). *See In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 220 F. Supp. 3d 1356, 1357 (J.P.M.L. 2016). *Beasley Allen* is a breach of contract action involving a joint venture agreement between three law firms that agreed to pool their resources to prosecute talcum powder claims against Johnson & Johnson. While *Beasley Allen* includes different claims than the actions in the MDL, it seems likely that it will implicate at least some common factual questions.

Despite any factual overlap, we are persuaded that transfer of *Beasley Allen* at this time is not necessary to promote the just and efficient conduct of the litigation.¹ On the same day the

¹ Plaintiff also argues that Johnson & Johnson did not have standing to notice *Beasley Allen* as a tag-along action. This argument is incorrect. Panel Rule 7.1(a) places an affirmative obligation on parties and counsel in an MDL to notify the Panel of potential tag-along actions. It does not, however, prohibit third parties from notifying the Panel of potential tag-along actions. Transfer here was not initiated by Johnson & Johnson—it did not file a motion to transfer *Beasley Allen* under 28 U.S.C. § 1407(c)(ii). Rather, it merely informed the Panel of the pendency of *Beasley Allen*, and the transfer process was initiated by the Clerk of the Panel issuing a conditional transfer order. *See id.* § 1407(c)(i) (“Proceedings for the transfer of an action under this section may be initiated by (i) the [Panel] upon its own initiative.”); Panel Rule 7.1(b) (“Initiation of CTO. Upon learning of the pendency of a potential tag-along action, the Clerk of the Panel may enter a [CTO].”).

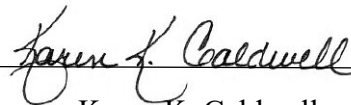
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CTO in this action issued, a Chapter 11 bankruptcy petition was filed in the Southern District of Texas that seeks to resolve all ovarian cancer talc claims. *See In re Red River Talc LLC*, No. 4:24-bk-90505 (Bankr. S.D. Tex.). All activity in the MDL has been stayed, including litigation of defendants' motion to disqualify the Beasley Allen law firm from plaintiffs' leadership in the MDL (which may involve some common factual questions with *Beasley Allen*). While the bankruptcy stay does not limit our authority to transfer an action under Section 1407,² at present there is no pretrial activity in the MDL with which to coordinate *Beasley Allen*. Thus, there are few efficiency or convenience benefits to be gained through transfer.

Additionally, because *Beasley Allen* involves a peripheral dispute that will focus on the parties' joint venture agreement and their obligations under that agreement, allowing this action to proceed separately from the MDL is unlikely to result in significant duplication or inconsistent rulings. Notably, neither Johnson & Johnson nor the defendants in *Beasley Allen* responded to the motion to vacate. *See* Panel Rule 6.1(c) ("Failure to respond to a motion shall be treated as that party's acquiescence to it.").

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-298" is vacated.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

² *See* Transfer Order at 1, MDL No. 2738 (J.P.M.L. Dec. 3, 2021), ECF No. 2784 (declining to stay transfer of action against J&J pending the first LTL bankruptcy proceeding); *In re Franklin Nat'l Bank Sec. Litig.*, 393 F. Supp. 1093, 1095–96 (J.P.M.L. 1975) ("We are simply indicating the place where the pretrial proceedings of these actions will occur. The question of the effect of the bankruptcy stay and any modification thereof is entirely a problem to be worked out by the transferee court, the bankruptcy court and the parties.").

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MDL No. 2738

SCHEDULE A

Middle District of Alabama

BEASLEY, ALLEN, CROW, METHVIN, PORTIS AND MILES, P.C. v. THE SMITH
LAW FIRM, PLLC, ET AL., C.A. No. 2:24-00582