

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ATRIUM MEDICAL CORP. C-QUR
MESH PRODUCTS LIABILITY LITIGATION**

MDL No. 2753

TRANSFER ORDER

Before the Panel: Plaintiff in the action listed on Schedule A (*Stegenga*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred his action to MDL No. 2753. Defendant Atrium Medical Corporation (Atrium) opposes the motion to vacate.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2753, 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 *Stegenga* shares questions of fact with MDL No. 2753 actions. Like many of these actions, *Stegenga* involves factual questions arising out of allegations that defects in defendants' C-Qur mesh products incite an allergic or inflammatory response that causes severe complications. *See In re Atrium Med. Corp. C-Qur Mesh Prods. Liab. Litig.*, 223 F. Supp. 3d 1355 (J.P.M.L. 2016). In addition to his claims against Atrium involving the C-Qur mesh, plaintiff also alleges he was implanted with hernia mesh products manufactured by C.R. Bard Inc. and Davol Inc. (together, Bard). Plaintiff alleges these products also were defective.

In support of the motion to vacate, plaintiff argues that MDL No. 2753 includes claims only involving Atrium hernia mesh products, and that his claims and injuries regarding the Atrium and Bard hernia mesh products are indivisible. He argues that, consequently, (1) the MDL No. 2753 transferee court has no authority over his claims against Bard; and (2) transfer to MDL No. 2753 may result in his claims proceeding in two districts. He also expresses concern that the Panel ultimately may transfer his claims against Bard to MDL No. 2846 – *In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litigation*.

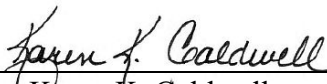
We do not find these arguments persuasive. Plaintiff's primary concern appears to be that the Panel will separate these claims against the two sets of defendants. But our conditional order transferred all claims in *Stegenga*, including those against Bard, to MDL No. 2753. And no party disputes that plaintiff's claims against Atrium and Bard should remain together. Plaintiff's view that the MDL No. 2753 transferee court lacks authority to adjudicate his claims against Bard is incorrect. When the Panel transfers a case to an MDL, the transferee judge has authority over pretrial proceedings in all aspects of that case. *Cf. In re Nexium (Esomeprazole) Prods. Liab. Litig.*, 908 F. Supp. 2d 1362, 1364 (J.P.M.L. 2012) ("The transferee judge can structure the pretrial proceedings so that discovery with respect to any issues unique to [the additional manufacturer defendant] can proceed concurrently with discovery on common issues."). As we consistently have held, Section 1407 transfer does not require a complete identity or even a majority of common factual issues. *See*

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id. at 1363. Indeed, MDL No. 2846—involving claims of defects in hernia mesh products manufactured by Bard—also includes actions brought by plaintiffs alleging implantation with hernia mesh products manufactured by other defendants. *See, e.g.*, Conditional Transfer Order Finalized (CTO-54), MDL No. 2846, ECF No. 425 (J.P.M.L. May 22, 2020) (transferring actions naming defendants Johnson & Johnson and Ethicon, Inc., as well as Bard). Should the MDL No. 2753 transferee judge determine after close scrutiny that inclusion of this action would not benefit the litigation, then Section 1407 remand can be accomplished with a minimum of delay. *See* Panel Rules 10.1-10.3.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of New Hampshire and, with the consent of that court, assigned to the Honorable Landya B. McCafferty for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell

Chair

Ellen Segal Huvelle
Catherine D. Perry
Matthew F. Kennelly

R. David Proctor
Nathaniel M. Gorton
David C. Norton

**IN RE: ATRIUM MEDICAL CORP. C-QUR
MESH PRODUCTS LIABILITY LITIGATION**

MDL No. 2753

SCHEDULE A

Northern District of Illinois

STEGENGA v. ATRIUM MEDICAL CORP., ET AL., C.A. No. 1:20-03589