

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: ETHICON PHYSIOMESH FLEXIBLE  
COMPOSITE HERNIA MESH  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2782

**TRANSFER ORDER**

**Before the Panel:** Plaintiff in the action listed on Schedule A (*Curry*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred her action to MDL No. 2782. Defendants Ethicon, Inc., and Johnson & Johnson (together, Ethicon) oppose 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. 2782, 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 *Curry* shares questions of fact with MDL No. 2782. Like many of the already-centralized actions, it involves factual questions arising out of allegations that defects in defendants' Physiomes mesh can lead to complications when implanted in patients. *See In re Ethicon Physiomes Flexible Composite Hernia Mesh Prods. Liab. Litig.*, 254 F. Supp. 3d 1381 (J.P.M.L. 2017).<sup>1</sup>

In support of the motion to vacate, plaintiff argues that removal of her action was improper, and the transferor court should decide her motion for remand to state court. Jurisdictional issues do not present an impediment to transfer of factually related cases, as plaintiff can present these arguments to the transferee judge.<sup>2</sup> *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

---

<sup>1</sup> The complaint alleges plaintiff was implanted with a defective hernia mesh product in 2017 and was previously implanted with a defective "pelvic floor repair product" in 2015. But responding defendants represent, and plaintiff does not dispute, that the device implanted in 2015 was Ethicon's Physiomes hernia mesh device. If the transferee judge determines after close scrutiny that the action does not, in fact, involve a Physiomes device, Section 1407 remand of the action to its transferor court can be accomplished with a minimum of delay. *See* Panel Rules 10.1–10.3.

<sup>2</sup> Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

-2-

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Northern District of Georgia and, with the consent of that court, assigned to the Honorable Richard W. Story 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: ETHICON PHYSIOMESH FLEXIBLE  
COMPOSITE HERNIA MESH  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2782

**SCHEDULE A**

Northern District of Mississippi

CURRY v. PHC-CLEVELAND, INC., ET AL., C.A. No. 4:20-00058