

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: SORIN 3T HEATER-COOLER SYSTEM
PRODUCTS LIABILITY LITIGATION (NO. II)**

MDL No. 2816

TRANSFER ORDER

Before the Panel: Plaintiff moves under Panel Rule 7.1 to vacate our order that conditionally transferred the action listed on Schedule A (*Napier*) to MDL No. 2816. Defendant LivaNova Holding USA, Inc. (LivaNova) opposes the motion to vacate.

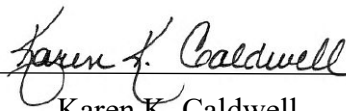
After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2816, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. No party disputes that, like many of the already-centralized actions, *Napier* involves factual questions arising out of allegations that LivaNova’s Sorin 3T heater-cooler system contains defects that leave the device susceptible to bacterial colonization, resulting in some patients’ exposure to nontuberculous mycobacterium (NTM) during surgery. *See In re Sorin 3T Heater-Cooler System Products Liability Litigation (No. II)*, 289 F. Supp. 3d 1335 (J.P.M.L. 2018). Plaintiff’s claims in *Napier*, like those of plaintiffs in the MDL, center on the allegation that the decedent developed an NTM infection after the use of a Sorin 3T heater-cooler unit during surgery. *Napier* thus shares questions of fact with the actions already in the MDL.

In support of the motion to vacate, plaintiff argues that removal of the action was improper, and the transferor court should decide her motion for remand to state court. The Panel has held that such jurisdictional objections generally do not present an impediment to transfer.¹ *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) (“[R]emand motions can be presented to and decided by the transferee judge.”).

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Middle District of Pennsylvania and, with the consent of that court, assigned to the Honorable Christopher C. Conner for inclusion in the coordinated or consolidated pretrial proceedings.

¹ 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.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell".

Karen K. Caldwell

Chair

Nathaniel M. Gorton
David C. Norton
Roger T. Benitez

Matthew F. Kennelly
Dale A. Kimball
Madeline Cox Arleo

**IN RE: SORIN 3T HEATER-COOLER SYSTEM
PRODUCTS LIABILITY LITIGATION (NO. II)**

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SCHEDULE A

Southern District of Ohio

NAPIER v. LIVANOVA DEUTSCHLAND GMBH, ET AL., C.A. No. 1:21-00739