

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: DAVOL, INC./C.R. BARD, INC.,
POLYPROPYLENE HERNIA MESH
PRODUCTS LIABILITY LITIGATION**

MDL No. 2846

TRANSFER ORDER

Before the Panel:* Plaintiff and healthcare defendants Brandon S. Cunningham, M.D., Alaina D. Dressler, P.A., and Centurion of Kansas, LLC, in the action listed on Schedule A (*Blaurock*) move under Panel Rule 7.1 to vacate our order that conditionally transferred the action to the Southern District of Ohio for inclusion in MDL No. 2846. The healthcare defendants alternatively request the Panel stay its order pending rulings on their motions to dismiss in the transferor court. Defendant C.R. Bard, Inc. (Bard) opposes the motions or, alternatively, requests severance and remand of the medical malpractice claims against the healthcare defendants and transfer of the product liability claims against Bard to the MDL.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions transferred to MDL No. 2846, 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. The actions encompassing MDL No. 2846 involve factual questions arising from allegations that defects in defendants' polypropylene hernia mesh products can lead to complications when implanted in patients including, *inter alia*, adhesions, damage to organs, and infections. See *In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Prods. Liab. Litig.*, 316 F. Supp. 3d 1380 (J.P.M.L. 2018). Plaintiff here alleges he was implanted with a Bard hernia mesh product and, consequently, the mesh tore loose and required revision surgery. He alleges his surgeons incorrectly installed the hernia mesh and should have foreseen the probability of mesh failure. He also alleges he was not treated for his hernia for several years, and was forced to work beyond his abilities while incarcerated.

Movants do not dispute that plaintiff's claim against Bard shares questions of fact and law with the actions in MDL No. 2846. But the moving healthcare defendants argue that (1) the action is unique because plaintiff also brings medical malpractice claims against his healthcare providers; (2) the Panel should allow the District of Kansas to rule on their pending motions to dismiss; and (3) transfer will cause them delay and prejudice. Plaintiff also argues that subject matter jurisdiction is lacking in this case.

We are not persuaded that the existence of plaintiff's medical malpractice claims should preclude transfer. We have held that "MDLs involving medical devices often include similar

* Judge Madeline Cox Arleo took no part in the decision of this matter.

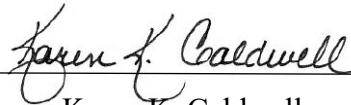
[medical negligence] claims against healthcare defendants.” *In re Boston Scientific Corp. Pelvic Repair Sys. Prods. Liab. Litig.*, MDL No. 2326, Transfer Order, ECF No. 1627 (J.P.M.L. Aug. 5, 2016). (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, MDL No. 2641, Transfer Order, ECF No. 230, at p. 2 (J.P.M.L. Feb. 4, 2016)). In fact, Bard points to several actions pending in MDL No. 2846 that involve similar claims against plaintiffs’ healthcare providers. But ultimately, we find that the transferee judge is in the best position to determine whether the allegations and claims involved in this action would benefit from inclusion in centralized proceedings. Therefore, as it has previously, if the transferee judge determines after close scrutiny that remand of this action or any claims in this or any other action is appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Panel Rules 10.1-10.3; *In re Davol, Inc.*, No. 2846, 2019 U.S. Dist. LEXIS 40586, at *2 (J.P.M.L. Mar. 13, 2019).

The healthcare defendants’ claims of delay and prejudice are not persuasive. The Panel long has held that, while transfer of a particular action might inconvenience some parties to that action, such a transfer often is necessary to further the expeditious resolution of the litigation taken as a whole. See, e.g., *In re Crown Life Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001). The healthcare defendants can present their motions to dismiss to the transferee court.

Finally, the Panel has held that 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 Southern District of Ohio and, with the consent of that court, assigned to the Honorable Edmund A. Sargus, Jr., for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

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

Matthew F. Kennelly
Roger T. Benitez

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.

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SCHEDULE A

District of Kansas

BLAUROCK v. SOUTHWIND SURGICAL GROUP, ET AL., C.A. No. 6:22-01196