

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:* Plaintiffs in the action listed on Schedule A (*Copeland*) move under Panel Rule 7.1 to vacate our order that conditionally transferred their action to MDL No. 2846. Alternatively, they request the Panel defer ruling on the motion to vacate pending the transferee court's ruling on their motion to remand *Copeland* to state court. Defendants C. R. Bard, Inc., Becton, Dickinson and Company, and Davol Inc. (together, Bard) 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. 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. Like many of the already-centralized actions, *Copeland* involves factual questions arising out of allegations that defects in defendants' polypropylene hernia mesh products can lead to complications when implanted in patients, including adhesions, damage to organs, inflammatory and allergic responses, foreign body rejection, migration of the mesh, 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). Like the MDL No. 2846 plaintiffs, the *Copeland* plaintiffs allege that Ms. Copeland was implanted with a hernia mesh product made by Bard and suffered injury.

In support of the motion to vacate, plaintiffs argue that, while they allege in their complaint implantation with "Kugel Mesh" made by Bard, defendants have not proven the mesh at issue is a model at issue in the MDL. They suggest that the burden is on defendants to supply product identification evidence to show that transfer is warranted. Requiring defendants to affirmatively prove through the production of evidence that a medical device is of a model at issue in a particular MDL is something that we have never required as a prerequisite to transfer, and we view it as likely adding only delay and inefficiency to this litigation. As defendants argue, the "Kugel Mesh" implanted in Ms. Copeland is likely one of three Bard hernia mesh models, all of which contain the name "Kugel." All three are involved in the MDL. Plaintiffs do not argue that there are particular Bard hernia mesh models that are *not* at issue in the MDL; they merely argue that defendants have not identified which specific model was used. If, upon transfer, product identification evidence shows that the mesh implanted in Ms. Copeland is not at issue in the MDL,

* Judge Karen K. Caldwell did not participate in the decision of this matter.

the transferee judge can suggest Section 1407 remand of *Copeland*, which the Panel can accomplish with a minimum of delay. *See* Panel Rules 10.1-10.3.

Plaintiffs also argue that transfer will inconvenience them because they are medically vulnerable and will be forced to travel. We are sympathetic to plaintiffs' medical concerns. But we long have held that, while transfer of a particular action might inconvenience some parties to that action, such a transfer is often 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). Moreover, "a plaintiff in a transferred action typically will not need to travel to the transferee district for depositions or otherwise." *In re Plavix Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 80756, at *5, MDL No. 2418 (J.P.M.L. June 6, 2013). Plaintiffs request that, if the Panel deems transfer appropriate, that it be "expressly without prejudice to plaintiffs' right to seek remote appearances, remote depositions, and medical accommodations." These requests are not properly before the Panel but are best presented to and decided by the transferee court.

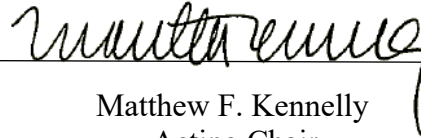
Plaintiffs request that transfer should be without prejudice to their choice-of-law and state law substantive legal arguments. As we have held, while in the transferee court, an "action generally remains subject to the substantive law and choice of law rules to which it would have been subject in the transferor court." *In re Dental Antitrust Litig.*, 509 F. Supp. 3d 1377, 1380 (J.P.M.L. 2020) (citation omitted). We simply do not consider "[t]he prospect of an unfavorable ruling by the transferee court or the possibility that another district judge may be more favorably disposed to a litigant's contention ... in exercising its discretion under Section 1407." *In re Nine West LBO Sec. Litig.*, 464 F. Supp. 3d 1383, 1385 (J.P.M.L. 2020) (quotation omitted). Plaintiffs are of course free to argue their choice of law and substantive legal arguments before the transferee court, but such arguments do not factor in our transfer analysis.

Finally, plaintiffs request the Panel stay its transfer decision to allow the transferor court to rule on their motion to remand to state court. But plaintiffs have withdrawn the motion to remand, which makes this request moot.

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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

A handwritten signature in black ink, appearing to read "Matthew Kennelly", is written over a horizontal line.

Matthew F. Kennelly
Acting Chair

David C. Norton
Madeline Cox Arleo
Richard Seeborg

Dale A. Kimball
M. Casey Rodgers

**IN RE: DAVOL, INC./C.R. BARD, INC.,
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SCHEDULE A

Eastern District of New York

COPELAND, ET AL. v. DAVOL INC., ET AL., C.A. No. 1:26-02288