

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 in the *Luks* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2846. Defendants C.R. Bard, Inc.; Davol Inc.; Becton, Dickinson and Co.; and Bard Devices, Inc., oppose the motion to vacate.

After considering the argument of counsel, we find that *Luks* 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. Like many of the already-centralized actions, it involves factual questions arising out of 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); *Luks* Compl. at ¶ 61. Plaintiff alleges that, as a result of her implantation with a Composix Kugel patch (CK Patch), she suffered injuries including a tear and laceration in the liver and infection, which required subsequent surgeries.

Plaintiff argues that cases involving the CK Patch are unique from the other MDL No. 2846 actions, and her action therefore should be excluded. The CK Patch was the subject of a recall between December 2005 and January 2007, following reports that the memory recoil ring in some CK Patches had broken. The CK Patch was one of the models of hernia patches at issue in MDL No. 1842 – *In re: Kugel Mesh Hernia Patch Products Liability Litigation*, 493 F. Supp. 2d 1371 (J.P.M.L. 2007). Plaintiff argues that very few of the MDL No. 2846 actions involve allegations of memory recoil ring break, and that discovery in the MDL will focus more broadly on defects with Bard's polypropylene mesh products that do not contain a ring. According to defendants, there are at least eleven cases pending in MDL No. 2846 that involve the CK Patch, and discussions are underway between the parties and the court concerning how the CK Patch cases should be handled in this MDL. We find that the transferee court is in the best position to determine whether claims involving the CK Patch would benefit from inclusion in the MDL. If the transferee judge determines that Section 1407 remand of any claims is appropriate, then he can suggest remand with a minimum of delay. *See* Panel Rules 10.1-10.3.

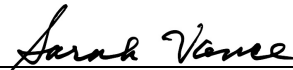
-2-

The CK Patch was not the only hernia patch model at issue in MDL No. 1842, and plaintiffs in the MDL No. 1842 actions alleged defects in addition to the memory recoil ring break. The *Luks* plaintiff suggests that her action will be subject to both MDLs, but MDL No. 1842 has been closed for over a year. Plaintiff argues that the additional discovery material she will seek beyond that produced in MDL No. 1842 will be limited. But such discovery will be common with the discovery that will be sought in the other CK Patch cases pending in MDL No. 2846 and may be accomplished more efficiently in a centralized fashion.

Plaintiff also argues that leadership counsel in MDL No. 2846 will not adequately represent the interests of the CK Patch plaintiffs. The transferee judge is in the best position to address this concern and structure proceedings so as to minimize inconvenience to any individual party, such as through the use of separate discovery tracks. We are confident that, if the transferee judge determines inclusion of the CK Patch cases is appropriate, he will efficiently and fairly manage these claims.

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 for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

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

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SCHEDULE A

District of Arizona

LUKS v. DAVOL INC., ET AL., C.A. No. 2:18-01280