UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ALLERGAN BIOCELL TEXTURED BREAST IMPLANT PRODUCTS LIABILITY LITIGATION MDL No. 2921

TRANSFER ORDER

Before the Panel: Defendant Allergan USA, Inc., moves under 28 U.S.C. § 1407(c) for transfer of the action listed on Schedule A (*Calais*) to the District of New Jersey for inclusion in MDL No. 2921. Plaintiff did not respond to the motion and, therefore, is deemed to acquiesce in the relief sought. *See* Panel Rule 6.1(c).

After considering the argument of counsel, we find that *Calais* involves common questions of fact with the actions transferred to MDL No. 2921, 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. In our order establishing MDL No. 2921, we held that centralization was warranted for actions arising out of "Allergan's announcement on July 24, 2019, of a voluntary worldwide recall of its BIOCELL textured breast implants and tissue expanders" related to an investigation by the U.S. Food and Drug Administration into reports that the products posed a risk of a cancer of the immune system referred to as breast-implant associated anaplastic large cell lymphoma (BIA-ALCL). *See In re Allergan BIOCELL Textured Breast Implant Prods. Liab. Litig.*, 412 F. Supp. 3d 1361, 1362 & n.4 (J.P.M.L. 2019). The centralized actions present common factual questions pertaining to the allegation "that Allergan's BIOCELL textured breast implants and tissue expanders significantly increase the risk of developing BIA-ALCL, and that Allergan failed to warn the FDA, patients, and healthcare providers of this risk." *See id.* at 1362. The *Calais* action undisputedly raises the same core factual questions and thus is appropriate for transfer.

The *Calais* action alleges that plaintiff was implanted with Allergan's BIOCELL textured breast implants and that she had the implants surgically removed after learning of the 2019 recall and, in particular, the implants' reported association with cancer.[1] The actions in the MDL raise these very same issues. *See, e.g., In re Allergan BIOCELL Textured Breast Implant Prods. Liab. Litig.*, No. 19-2921, Opinion, Doc. No. 283, at 41 (D.N.J. Mar. 19 2021) ("Plaintiffs claim to have sustained injuries in . . . the surgeries to remove the BIOCELL implants from their bodies" and seek damages for "emotional distress . . . including the fear of cancer"). The complaint's manner

[1] *See Calais* Am. Compl. ¶ 6 ("On or about October 2019, plaintiff became aware that the ALLERGAN implants . . . had been recalled from the market and, upon information and belief, had been associated with causing cancer in patients with the ALLERGAN implants.").

of describing the alleged risk as "cancer" and "certain types of cancer" without using the term BIA-ALCL does not prevent transfer. Plaintiff's alleged implant removal surgery plainly is tied to the recall and the reported cancer risk – namely, BIA-ALCL – underlying the recall, and thus plaintiff's action raises factual issues that overlap with the actions in the MDL.[2]

We observe that *Calais* raises an issue not involved in the MDL. Plaintiff, a breast cancer survivor, alleges that the Allergan textured implants caused her breast cancer to recur and may cause it to recur in the future.[3] The question of breast cancer causation is not one of the common issues in the MDL. Still, the overall interests of convenience and efficiency will be served by transfer of *Calais*, as the action likely will involve common discovery, dispositive motions, and other pretrial proceedings concerning the recall and the alleged risk of BIA-ALCL. If the transferee judge finds at any point in the pretrial proceedings that the inclusion of *Calais* will not serve the convenience of the parties and witnesses or promote the just and efficient conduct of this litigation, 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.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Brian R. Martinotti for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez
Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

[2] Indeed, plaintiff recently stated in a motion for leave to file a second amended complaint that her action and the actions in the MDL "involv[e] substantially similar allegations against Allergan," and attached a proposed second amended complaint that, as Allergan notes, appears to copy many of the allegations in the MDL's Consolidated Class Action Complaint. *See Calais v. Allergan USA, Inc.*, No. 20-01303, Doc. No. 33 (W.D. La. Mar. 18, 2021).

[3] *See Calais* Am. Compl. ¶ 6

IN RE: ALLERGAN BIOCELL TEXTURED BREAST IMPLANT PRODUCTS LIABILITY LITIGATION MDL No. 2921

SCHEDULE A

Western District of Louisiana

CALAIS v. ALLERGAN USA, INC., C.A. No. 6:20−01304