

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
AND MECHANICAL VENTILATOR PRODUCTS
LIABILITY LITIGATION

MDL No. 3014

TRANSFER ORDER

Before the Panel: Plaintiff in the *King* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order that conditionally transferred *King* to the Western District of Pennsylvania for inclusion in MDL No. 3014. Defendants Philips RS North America LLC and Philips RS North America Holding Corporation oppose the motion.

After considering the parties' arguments, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 3014, 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 centralizing this litigation, we held that the Western District of Pennsylvania was an appropriate Section 1407 forum for actions sharing factual questions arising from Philips' recall of certain Continuous Positive Airway Pressure (CPAP), Bi-Level PAP, and mechanical ventilator devices on June 14, 2021. *See In re Philips Recalled CPAP, Bi-Level PAP, and Mech. Ventilator Prods. Liab. Litig.*, 568 F. Supp. 3d 1408, 1409–10 (J.P.M.L. 2021). The recalled devices allegedly contain PE-PUR sound abatement foam that may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury. Like the actions in the MDL, *King* will involve factual questions relating to the recall of the Philips CPAP devices and the alleged defect that can result in PE-PUR foam degrading or off-gassing and injuring the user. Indeed, we transferred Plaintiff King's previous action to the MDL, in which he asserted substantially identical claims. *See King v. Koninklijke Philips N.V.*, C.A. No. 2:23-02040 (W.D. Pa.) (voluntarily dismissed on June 14, 2024).

Plaintiff, who is proceeding *pro se*, opposes transfer by arguing that federal subject-matter jurisdiction does not exist over his action and that his pending motion for remand to state court should be decided before transfer.¹ We are not persuaded by this argument. Jurisdictional

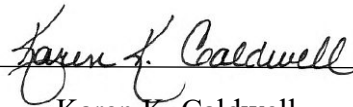
¹ Plaintiff also requests sanctions against defense counsel based on their removal of *King* to federal court. We deny this request.

- 2 -

objections generally do not present an impediment to transfer.² *See, e.g., In re Prudential Ins. Co. of Am. Sales Pracs. 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 Western District of Pennsylvania and, with the consent of that court, assigned to the Honorable Joy Flowers Conti for 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
Madeline Cox Arleo

² Panel Rule 2.1(d) expressly provides that 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.

**IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
AND MECHANICAL VENTILATOR PRODUCTS
LIABILITY LITIGATION**

MDL No. 3014

SCHEDULE A

Northern District of Ohio

KING v. CORNERSTONE MEDICAL SERVICES, ET AL., C.A. No. 5:24-01344