

**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 *Gandy* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Gandy* to the Western District of Pennsylvania for inclusion in MDL No. 3014. Defendant Philips RS North America LLC opposes the motion.

In support of his motion to vacate, plaintiff—who is proceeding *pro se*—argues that federal subject matter jurisdiction over his action is lacking and that the transferor court should decide his pending remand motion before any transfer. This argument is not persuasive, not least because plaintiff filed his action in federal court and there is no remand motion pending. In any event, we have held that jurisdictional objections such as those asserted by plaintiff here generally do not present an impediment to transfer. *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.”).

Plaintiff also argues that transfer will unduly delay litigation of his claims and cause him inconvenience and unnecessary expense. Transfer of an action under Section 1407, however, is appropriate if it furthers the expeditious resolution of the litigation taken as a whole, even if some parties to the action might experience inconvenience or delay. *See In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351–52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”). Furthermore, centralization is for pretrial proceedings only, and there usually is no need for parties or witnesses to travel to the transferee court for depositions or court hearings. *See In re MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003).

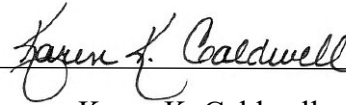
Therefore, after considering the parties’ arguments, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 3014, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient 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 Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator

- 2 -

devices on June 14, 2021. The recalled devices allegedly contain polyester-based polyurethane (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. *See In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Prods. Liab. Litig.*, 568 F. Supp. 3d 1408, 1409–10 (J.P.M.L. 2021). As in many of the cases already in the MDL, plaintiff in *Gandy* alleges that he suffered physical injury caused by the alleged problems with the PE-PUR foam in a recalled device.

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

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

MDL No. 3014

SCHEDULE A

Southern District of Texas

GANDY v. KONINKLIJKE PHILIPS NV, ET AL., C.A. No. 4:23-00058