

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION (NO. II)**

MDL No. 3029

TRANSFER ORDER

Before the Panel:* Plaintiff in the action listed on Schedule A (*Jarmon*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred his action to MDL No. 3029. Defendants Covidien LP; Covidien Holding Inc.; Covidien Inc.; Covidien plc; Medtronic, Inc.; and Medtronic USA, Inc. (together, Covidien) 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. 3029, 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, *Jarmon* involves factual questions arising out of allegations that defects in Covidien’s hernia mesh products can lead to complications. *See In re Covidien Hernia Mesh Prods. Liab. Litig. (No. II)*, 607 F. Supp. 3d 1356, 1358 (J.P.M.L. 2022). Like the MDL No. 3029 plaintiffs, the *Jarmon* plaintiff alleges he was implanted with a Covidien mesh product to repair a hernia and suffered injury. Similarly, he alleges that the polyester polymer used in the design of Covidien’s polyester hernia meshes is more brittle and significantly more susceptible to fatigue fracture, breakage, fragmentation, and other mechanical failures than alternative polymers, and that it is susceptible to degradation, incites inflammation and heightened foreign body response, and is significantly more susceptible to loss of mechanical strength over time than alternative materials.

In support of the motion to vacate, plaintiff argues that (1) his case is unique because he alleges severe injuries and state-specific claims; (2) transfer would be inconvenient for plaintiff and his Texas-based witnesses; and (3) transfer would not result in the just and efficient conduct of *Jarmon* because the MDL is too advanced. We find these arguments unpersuasive. Plaintiff alleges injuries similar to those alleged by many MDL plaintiffs resulting from implantation of a device at issue in the MDL. Defendants note that approximately 170 MDL plaintiffs are Texas residents, which makes it unlikely that plaintiff’s state-law claims are unique. Moreover, “[t]he presence of differing legal theories is outweighed when the underlying actions ... arise from a common factual core.” *In re BPS Direct, LLC, & Cabela’s LLC, Wiretapping Litig.*, 677 F. Supp. 3d 1363, 1365 (J.P.M.L. 2023) (quotation omitted).

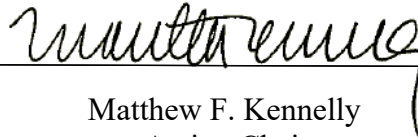
* Judge Karen K. Caldwell did not participate in the decision of this matter.

- 2 -

We are sympathetic to the severity of plaintiff's injuries, but we consistently have held that, "[w]hile transfer of a particular action might inconvenience some parties to that action, transfer is often necessary to further the expeditious resolution of the litigation taken as a whole." *In re Covidien No. II*, 607 F. Supp. 3d at 1358. 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." *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 669 F. Supp. 3d 1375, 1380 (J.P.M.L. 2023) (citation omitted). We are not persuaded that the MDL is too far advanced for the litigants to benefit from transfer of this case. Case-specific discovery remains ongoing, and the court recently held the first bellwether trial. Nevertheless, if the transferee judge determines that this action will no longer benefit from inclusion in the MDL (or, more broadly, if the inclusion of new actions in the MDL is no longer advisable), she can suggest Section 1407 remand of this or any other action, which 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 Massachusetts and, with the consent of that court, assigned to the Honorable Patti B. Saris for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Matthew F. Kennelly
Acting Chair

David C. Norton
Madeline Cox Arleo
Richard Seeborg

Dale A. Kimball
M. Casey Rodgers

**IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION (NO. II)**

MDL No. 3029

SCHEDULE A

Eastern District of Texas

JARMON v. MEDTRONIC USA, INC., C.A. No. 4:26-00314