**UNITED STATES JUDICIAL PANEL**
**on**
**MULTIDISTRICT LITIGATION**

**IN RE: BARD IMPLANTED PORT CATHETER PRODUCTS LIABILITY LITIGATION** MDL No. 3081

**TRANSFER ORDER**

**Before the Panel:** Defendants Becton, Dickinson & Company; C.R. Bard, Inc.; Bard Access Systems, Inc.; and Bard Peripheral Vascular, Inc. (together, Bard) move under Panel Rule 7.1 to vacate our order that conditionally transferred the three actions listed on Schedule A to the District of Arizona for inclusion in MDL No. 3081. Plaintiffs oppose the motion.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions transferred to MDL No. 3081, 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 centralization was warranted for actions sharing factual questions arising from allegations that defendants manufacture the catheter component of their port devices with a concentration of barium sulfate that is too high, which reduces the material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the catheter, and thrombosis. *See In re Bard Implanted Port Catheter Prods. Liab. Litig.*, __ F. Supp. 3d __, 2023 WL 5065100 (J.P.M.L. Aug. 8, 2023). Like many plaintiffs in MDL No. 3081, plaintiffs in these three actions allege they were implanted with a Bard implanted port catheter and subsequently suffered an infection. Thus, they allege claims against the same defendants, regarding the same products, and alleging similar injuries as the MDL plaintiffs. The cases therefore will share factual questions regarding, for example, defendants' testing of their implanted port devices and the adequacy of the warnings given about the risk of infection. More specifically, these plaintiffs, like those in MDL No. 3081, allege that defendants' manufacturing process in constructing the catheter component of the devices involves too a high a concentration of barium sulfate particles, which ultimately increases the risk of infection. *See Franks* Compl. at ¶¶ 40-45; *Meadors* Compl. at ¶¶ 42-47; *Hunter* Compl. at ¶¶ 42-47. Transfer therefore is consistent with our order granting centralization, and these actions will involve overlapping discovery and pretrial proceedings.

In opposing transfer, defendants argue that transfer would impermissibly expand the scope of the MDL because these three complaints also include allegations of additional defects in defendants' devices that may account for the infections plaintiffs suffered. Along with the alleged catheter defect, plaintiffs allege that the port reservoir component of the devices at issue was comprised of Polyoxymethylene (POM), which can undergo oxidative degradation, leading to reduction of the mechanical properties of the polymer and the formation of cracks, fissures, and other physical defects. Plaintiffs allege this increases the risk of thrombosis and infection. They further allege that the port reservoir includes three palpation bumps, which can cause undue

compression on the tissue of the subcutaneous pocket into which the port is placed and lead to ulceration and tissue necrosis. *See, e.g.*, *Franks* Compl. at ¶¶ 18-33.

The addition of these alternative theories of causation does not diminish the benefits of transferring these cases. Whether plaintiffs' infections were caused by a defect in the catheter, in the port reservoir, or both may not be readily known at the time of filing, and may require fact and expert discovery to develop. Moreover, plaintiffs' allegations concerning a port reservoir defect implicate the catheter itself. *See, e.g.*, *Hunter* Compl. at ¶ 29 (alleging that the use of POM in the port reservoir can lead to the "formation of biofilm in the port reservoir and the catheter"); ¶ 33 (alleging that the palpation bumps on the port reservoir can cause undue compression stress, which "leads to ulceration and tissue necrosis which potentiates port and catheter infection"). Defendants suggest that the parties wait for individualized discovery to indicate whether a particular action involves a catheter-related injury and, if so, seek transfer at that time. We do not agree. Requiring the parties and the courts to engage in protracted discovery and other pretrial proceedings outside the MDL while the parties attempt to determine the exact mechanism of causation would negate many of the benefits of Section 1407 transfer. Plaintiffs' injuries are indivisible, and we have previously found that alternative theories of causation of a plaintiff's injury are appropriate to include in an MDL, even where, unlike here, those alternative theories involved a separate product manufactured by a previously unnamed defendant. *See In re Coloplast Corp. Pelvic Support Sys. Prods. Liab. Litig.*, 883 F. Supp. 2d 1348, 1349 (J.P.M.L. 2012) ("[The plaintiff's alleged injuries from the use of Surgimend and the Coloplast product are indivisible, and … the two products were used in surgical procedures on the plaintiff that were performed back-to-back on the same day."). We are confident that, to the extent these three cases involve unique issues, "the transferee judge can structure pretrial proceedings so that discovery with respect to such issues can proceed concurrently with discovery on common issues." *Id*.

Although the transferee judge held that plaintiffs could not include allegations regarding the port reservoir defects in their master complaint, he has made no pronouncements on whether these actions and allegations ultimately should be included in the MDL. *See* Case Management Order No. 6, MDL No. 3081 (D. Ariz. Nov. 22, 2023), ECF No. 111 at p. 4. Rather, the court stated that the Panel "should decide in the first instance whether the MDL should be expanded to include new claims involving different defects in a separate product component." *Id*. Indeed, the court noted that "[t]hose allegations can be added later if the Panel expands this MDL to include them." *Id*. That said, if after close scrutiny, the transferee judge determines that continued inclusion of these or any other actions in the MDL is no longer advisable, then the Panel can remand them to their transferor courts with a minimum of delay. *See* Panel Rules 10.1-10.3.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Arizona and, with the consent of that court, assigned to the Honorable David G. Campbell for inclusion in the 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

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**SCHEDULE A**

District of Colorado

HUNTER v. BECTON, DICKINSON AND CO., C.A. No. 1:23−03048

District of New Jersey

MEADORS v. BECTON, DICKINSON AND COMPANY, ET AL., C.A. No. 2:23−22267

Northern District of Texas

FRANKS v. BECTON DICKINSON AND COMPANY, ET AL., C.A. No. 3:23−02538