

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ETHICON, INC., POWER MORCELLATOR
PRODUCTS LIABILITY LITIGATION**

MDL No. 2652

TRANSFER ORDER

Before the Panel: Plaintiffs and the healthcare defendants¹ in the action listed on Schedule A (*Martin*) move under Panel Rule 7.1 to vacate our order conditionally transferring *Martin* to MDL No. 2652. The Ethicon defendants (Johnson & Johnson; Johnson & Johnson Services, Inc.; Ethicon, Inc.; Ethicon Endo-Surgery, Inc.; Ethicon Women’s Health and Urology Division of Ethicon, Inc.) did not respond to 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. 2652, 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, *Martin* alleges that defects in the design of Ethicon’s power morcellators made laparoscopic hysterectomy procedures more likely to result in the dissemination and upstaging of occult cancer, and that Ethicon failed to warn patients adequately of these risks. *See In re: Power Morcellator Prods. Liab. Litig.*, ___ F. Supp. 3d ___, 2015 WL 6080352 at *1 (J.P.M.L. Oct. 15, 2015).

In support of the motions to vacate, plaintiffs and the healthcare defendants variously argue that (1) the Panel has restricted this MDL only to claims against Ethicon, (2) MDL No. 2652 does not involve any similar medical negligence claims, (3) subject matter jurisdiction is lacking, and (4) transfer will cause inconvenience and prejudice to movants.

In creating MDL No. 2652, we did not narrow the litigation only to claims against Ethicon, but rather only to cases that involved an Ethicon product. Indeed, we included two actions that named both Ethicon and another manufacturer, finding that separation of the claims “could create confusion and inefficiency concerning causation and liability.” *Id.* at *2. Moreover, though the MDL thus far has not involved any cases naming healthcare defendants, “MDLs involving medical devices often include similar claims against healthcare defendants.” *In re: Bard IVC Filters Prods. Liab. Litig.*, MDL No. 2641, Transfer Order, ECF No. 230, at p. 2 (J.P.M.L. Feb. 4, 2016).

¹ Frederick Memorial Hospital, Inc.; Yeung Wook Lee, M.D.; and Capital Women’s Care, LLC.

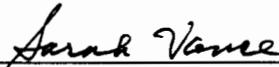
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The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present these arguments to the transferee judge.² *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). We also have held that, while transfer of a particular action might inconvenience some parties to that action, such a transfer often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re: Crown Life Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

Though Ethicon has not opposed the motion to vacate and, therefore, is deemed to acquiesce to the relief sought, *see* Panel Rule 6.1(c), “the Panel has an institutional responsibility that goes beyond simply accommodating the particular wishes of the parties.” *In re: Equinox Fitness Wage & Hr. Emp’t Practices Litig.*, 764 F. Supp. 2d 1347, 1348 (J.P.M.L. 2011).

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Kansas and, with the consent of that court, assigned to the Honorable Kathryn H. Vratil for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

² Moreover, under Panel Rule 2.1(d), 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: ETHICON, INC., POWER MORCELLATOR
PRODUCTS LIABILITY LITIGATION**

MDL No. 2652

SCHEDULE A

District of Maryland

MARTIN, ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 8:15-03787