

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ETHICON, INC., PELVIC
REPAIR SYSTEM PRODUCTS
LIABILITY LITIGATION**

Alicia Malcolm v. Boston Scientific Corp., et al.,)	
W.D. Missouri, C.A. No. 3:12-05017)	MDL No. 2327
Cheryl Poole, et al. v. Ethicon, Inc., et al.,)	
S.D. Texas, C.A. No. 4:12-00339)	

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in the Southern District of Texas *Poole* action and plaintiff and defendants Dr. Todd A. Richards and Freeman Health System d/b/a Southwest Women’s Center (the healthcare defendants) in the Western District of Missouri *Malcolm* action move to vacate our order that conditionally transferred their respective actions to MDL No. 2327. Responding defendants Ethicon, Inc. (Ethicon) and Boston Scientific Corp. oppose the motions to vacate.

After considering all argument of counsel, we find that these actions share questions of fact with actions in this litigation previously transferred to MDL No. 2327, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization. In that order, we held that the Southern District of West Virginia was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged injuries from pelvic surgical mesh products manufactured by Ethicon and related entities. *See In re Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 2012 WL 432533 (J.P.M.L. Feb. 7, 2012). These actions involve injuries from implantation of Ethicon pelvic surgical mesh products, and clearly fall within the MDL’s ambit.

None of the moving parties dispute that their actions share questions of fact concerning Ethicon pelvic surgical mesh products with actions pending in MDL No. 2327. These parties instead base their arguments against transfer primarily on the pendency of motions to remand their respective actions to state court. 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 wishing to rule upon the remand motion generally has adequate time in which to do so. Indeed, the Southern District of Texas has, since the filing of our conditional transfer order, denied plaintiffs’ motion for remand to state court. Plaintiffs can present their motion for

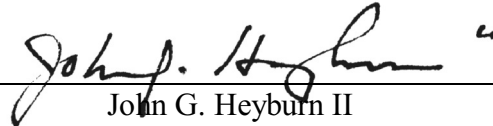
* Judge Kathryn H. Vratil took no part in the decision of this matter.

-2-

reconsideration and their motion for leave to amend the complaint to the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7(2nd Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F.Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Southern District of West Virginia and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written above a horizontal line. The signature is cursive and includes a small mark at the end.

John G. Heyburn II
Chairman

W. Royal Furgeson, Jr.
Paul J. Barbadoro
Charles R. Breyer

Barbara S. Jones
Marjorie O. Rendell