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 Roger Travera moves under Panel Rule 7.1 to vacate our order that conditionally transferred the action listed on Schedule A[1] 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 primarily argues that federal subject matter jurisdiction over *Travera* is lacking and asks that we "remand" the action either to Pennsylvania state court or to the transferor court. To the extent plaintiff seeks remand to state court, the Panel is not authorized to grant or deny remand to state court. *See, e.g.*, *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) ("Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand."). To the extent plaintiff merely seeks to vacate the conditional transfer order, his arguments are not persuasive. The Panel has held that jurisdictional objections such as those asserted by plaintiff here generally do not present an impediment to transfer.[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) ("[R]emand motions can be presented to and decided by the transferee judge."). "This is so even where, as here, plaintiffs assert that the removals were patently improper." *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018).

Plaintiff also argues that transfer is not appropriate because his action is dissimilar to those in MDL No. 3014. First, plaintiff distinguishes his personal injury claims from the many actions in the MDL that assert economic loss class claims. Plaintiff's characterization of MDL No. 3014

[1] According to the parties, this case is erroneously captioned as *Roger Travera v. Koninklijke Philips N.V., et al.* We refer to the case as it is captioned in the transferor court.

[2] 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 generally has adequate time to rule on a remand motion if it chooses to do so. Here, the transferor court has stayed *Travera* pending our decision to transfer.

as primarily involving consumer class claims, however, is inaccurate. The Panel has transferred no fewer than eighty actions to the MDL in which plaintiffs assert personal injury claims stemming from the alleged defects in certain Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices that were recalled by Philips in June 2021. *Travera* involves substantially similar personal injury claims and therefore will require common discovery regarding the development and safety of the recalled devices and the potential harm that can be caused by the alleged defect. In any event, "Section 1407 does not require a complete identity of common factual issues or parties as a prerequisite to transfer, and the presence of additional facts is not significant where the actions arise from a common factual core." *In re Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litig.*, 410 F. Supp. 3d 1350, 1353–54 (J.P.M.L. 2019).

Plaintiff alternatively contends that his personal injury action differs from those in the MDL because it will involve plaintiff-specific questions about causation. As we have previously observed, "[a]lmost all personal injury litigation involves questions of causation that are plaintiff-specific. Those differences are not an impediment to centralization where common questions of fact predominate." *In re Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 65 F. Supp. 3d 1402, 1404 (J.P.M.L. 2014). *Travera* involves the same Philips product as many of the actions in the MDL (a DreamStation CPAP device), the same alleged method of failure, and will involve common discovery regarding the development, manufacture, testing, and regulatory history of the product.

Plaintiff additionally contends that transfer will not enhance the convenience of the parties and witnesses or the efficient conduct of the litigation. Transfer of an action, 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 CPAP, Bi-Level PAP, and mechanical ventilator 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.*, MDL No. 3014, __ F. Supp. 3d __, 2021 WL 4704801, at *1 (J.P.M.L. Oct. 8, 2021). As in many of the cases already in the MDL, plaintiff here alleges that he suffered physical injury caused by the alleged problems with the PE-PUR foam in defendants' devices.

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

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Chair

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

MDL No. 3014

SCHEDULE A

Eastern District of Pennsylvania

TRAVERA v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 2:21−05674