# UNITED STATES JUDICIAL PANEL on MULTIDISTRICT LITIGATION

IN RE: AMERICAN MEDICAL SYSTEMS, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION

MDL No. 2325

IN RE: BOSTON SCIENTIFIC CORP. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION

MDL No. 2326

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

MDL No. 2327

#### TRANSFER ORDER

**Before the Panel:**\* Before the Panel are three dockets involving allegations of defects in various models of pelvic surgical mesh products manufactured by three groups of manufacturers.¹ Plaintiffs in almost twenty actions before the Panel have moved pursuant to 28 U.S.C. § 1407, to centralize all MDL No. 2325, MDL No. 2326, and MDL No. 2327 actions in the Southern District of West Virginia. In MDL No. 2325, defendant AMS has moved to centralize the MDL No. 2325 actions in the District of Minnesota or, alternatively, if the Panel deems centralization of three MDLs to be appropriate, suggests the Southern District of West Virginia as transferee district. This litigation currently consists of approximately150 actions spread across the country,² as listed on the attached schedules. The Panel has been notified of numerous additional potentially related actions.³

<sup>\*</sup> Judge W. Royal Furgeson, Jr. took no part in the decision of this matter.

American Medical Systems, Inc. and related entities (AMS); Boston Scientific Corp. (Boston Scientific); and Ethicon, Inc., Johnson & Johnson, and related entities (Ethicon).

Two additional actions were included in the MDL No. 2325 motion, and a third action was included in the motions to centralize MDL Nos. 2325 and 2327, but they have each been remanded to state court or voluntarily dismissed. An additional unrelated action inadvertently was included in the MDL No. 2327 Section 1407 motion, but movants have withdrawn that action from consideration on the motion.

These actions and any other related actions are potential tag-along actions. *See* Rules 1.1(h), 7.1, and 7.2.

Plaintiffs in over 100 actions and potentially related actions support centralization of all actions in the Southern District of West Virginia. Responding plaintiffs, alternatively or in the first instance, also have suggested other transferee districts for one or more of these MDLs, including the Eastern District of Louisiana, the Western District of Louisiana, the Eastern District of Pennsylvania, and the Northern District of California. Plaintiff in the District of New Jersey *Bienstock* action opposes centralization, and plaintiffs in the District of Nevada *Erwin* action request the Panel defer transferring their case until their motion for remand to state court is decided, but concede that if remand is denied, transfer is appropriate. Defendant Boston Scientific suggests centralization of the MDL No. 2326 actions in the Western District of Oklahoma or, if the Panel deems centralization of three MDLs in one district to be appropriate, supports the Southern District of West Virginia as transferee district. Defendant Ethicon suggests centralization of only the MDL No. 2327 actions in the District of New Jersey or, alternatively, the Northern District of Georgia.

Almost all parties agree that centralization of each of these separate MDLs is appropriate. The actions in each MDL share factual issues arising from allegations of defects in pelvic surgical mesh products manufactured by AMS, Boston Scientific, and Ethicon, respectively. Centralization therefore will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary. Moreover, centralization of each litigation is consistent with our decisions in *In re Mentor Corp. ObTape Transobturator Sling Products Liability Litigation*, MDL No. 2004, 588 F.Supp.2d 1374 (J.P.M.L. 2008); and *In re Avaulta Pelvic Support Systems Products Liability Litigation*, MDL No. 2187, 746 F.Supp.2d 1362 (J.P.M.L. 2010).

The central dispute among the parties is where each MDL should proceed. Most plaintiffs argue in favor of three MDLs proceeding in one district; namely, the Southern District of West Virginia. Defendants prefer centralization of each litigation in separate districts. We are persuaded that the Southern District of West Virginia is the most appropriate transferee forum for each of these MDLs. Chief Judge Joseph R. Goodwin of that district is currently presiding over MDL No. 2187, which involves claims of defects in similar pelvic surgical mesh products, and is uniquely situated to preside over the similar claims in these three MDLs. The pelvic surgical mesh products at issue in MDL Nos. 2325, 2326, and 2327 are used to treat similar conditions as those at issue in MDL No. 2187, and they have allegedly resulted in similar injuries. Almost all responding plaintiffs support centralization in this district, and defendants AMS and Boston Scientific concede that the Southern District of West Virginia is an appropriate transferee district. Finally, a number of these actions are brought by plaintiffs who were implanted with multiple products made by multiple manufacturers. Centralization of the three MDLs in one court will allow for coordination of any overlapping issues of fact in such multi-product, multi-defendant actions.<sup>4</sup>

The Panel has determined in consultation with the transferee judge to transfer actions involving multiple manufacturer defendants to the MDL involving the first named defendant in that action.

We will not delay transfer of the District of Nevada *Erwin* action. Plaintiffs can present their motion for remand to state court to the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). We similarly decline to exclude the District of New Jersey *Bienstock* action from MDL No. 2327, as it shares questions of fact with the actions in that MDL and does not appear to be so far advanced that it would not benefit from centralized proceedings.

We decline to include three of the actions listed on the MDL No. 2325 motion in centralized proceedings, as listed on Schedule B. After the motions to centralize were filed, plaintiffs in the District of Minnesota Flight action amended their complaint to bring claims only against an unrelated manufacturer. AMS is no longer named in this action and, therefore, it appears that it does not belong in MDL No. 2325. Additionally, the Southern District of West Virginia Culbertson action that was included in the initial motion for centralization in MDL No. 2325 is currently a part of MDL No. 2187, as it involves claims against C.R. Bard, Inc. (Bard). In transferring the claims against Bard in October 2011, the Panel separated and remanded claims against AMS to the District of South Carolina. The claims involving AMS, therefore, are still pending in the District of South Carolina, not in the Southern District of West Virginia. We have determined, however, that it is beneficial in this litigation for a particular action involving claims against multiple manufacturers to remain whole and proceed as one action. Therefore, the Panel will place the remaining claims in the District of South Carolina Culbertson action on a conditional transfer order for MDL No. 2187 in due course. Finally, the Western District of Louisiana Waldroup action, which names Boston Scientific as its first defendant, is included in the MDL No. 2325 motion for centralization but not on the MDL No. 2326 motion for centralization. As we have determined to transfer such multi-product, multi-defendant actions to the MDL involving the first named defendant, the Panel will not transfer this action with the present order, but will instead place the action on a conditional transfer order in MDL No. 2326.

On the basis of the papers filed and hearing session held we find that the actions contained in each MDL involve common questions of fact, and that centralization of each of MDL No. 2325, 2326 and 2327 in the Southern District of West Virginia will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.

IT IS THEREFORE ORDERED that the motions for centralization of MDL No. 2325, MDL No. 2326, and MDL No. 2327 in the Southern District of West Virginia are granted.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A, encompassing MDL No. 2325 actions involving AMS, are transferred to the Southern District of West Virginia and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that transfer under Section 1407 of the three actions listed on Schedule B is denied.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule C, encompassing MDL No. 2326 actions involving Boston Scientific, are transferred to the Southern District of West Virginia and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule D, encompassing MDL No. 2327 actions involving Ethicon, are transferred to the Southern District of West Virginia and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for coordinated or consolidated pretrial proceedings.

#### PANEL ON MULTIDISTRICT LITIGATION

Chairman

Kathryn H. Vratil Paul J. Barbadoro

Charles R. Breyer

Barbara S. Jones Marjorie O. Rendell

MDL No. 2325

#### SCHEDULE A

#### Northern District of Alabama

Shannon Farr, et al. v. American Medical Systems, Inc., et al., C.A. No. 5:11-02767

## District of Arizona

Kaylin Oldfather v. American Medical Systems, Inc., C.A. No. 2:11-02022

## Central District of California

Jill Engledow v. Mentor Corporation, et al., C.A. No. 2:11-07391 Susan Galbreath, et al. v. Steve Seung Yil Koh, M.D., et al., C.A. No. 2:11-08387

#### Northern District of California

Ellen Ambroff, et al. v. American Medical Systems, Inc., C.A. No. 3:08-04289 Shellie Hill, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04610 Judy Anna Winegardner, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04611 Iona Metcalf, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04612 Jenelle Hoover, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04614 Kathleen Nichols-Gould, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04616 Vicki Gray v. American Medical Systems, Inc., C.A. No. 3:11-04668 Kathleen Schmidt, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04670 Francine Baia, et al. v. American Medical Systems, Inc., C.A. No. 3:11-04671 Summer Abrego v. American Medical Systems, Inc., C.A. No. 3:11-04672 Carole Chenoweth v. American Medical Systems, Inc., C.A. No. 3:11-05145 Patricia Hendricksen v. American Medical Systems, Inc., C.A. No. 3:11-05146 Sherry Maloney v. American Medical Systems, Inc., C.A. No. 3:11-05312 Lisa Roddy, et al. v. American Medical Systems, Inc., C.A. No. 4:11-03970 Michelle Arsenault v. American Medical Systems, Inc., C.A. No. 4:11-04343 Susan Petkovich, et al. v. American Medical Systems, Inc., C.A. No. 4:11-04613 Letitia Greene-Newton, et al. v. American Medical Systems, Inc. C.A. No. 4:11-04615 Veda Lester v. American Medical Systems, Inc., C.A. No. 4:11-04669 April Stevens v. American Medical Systems, Inc., C.A. No. 4:11-05143 Joette Boone, et al. v. American Medical Systems, Inc., et al., C.A. No. 4:11-05144 Cindy Wyatt, et al. v. American Medical Systems, Inc., C.A. No. 4:11-05147 Jan Glisson, et al. v. American Medical Systems, Inc., C.A. No. 5:11-04945 Ramona Foley, et al. v. American Medical Systems, Inc., C.A. No. 5:11-05014

## MDL No. 2325 Schedule A (Continued)

## District of Delaware

Cathy Hoppe v. American Medical Systems, Inc., et al., C.A. No. 1:11-01012

## District of District of Columbia

Deborah Tedford v. American Medical Systems, Inc., C.A. No. 1:11-01472

#### Northern District of Florida

Carolyn Finlay v. American Medical Systems, Inc., C.A. No. 3:11-00507

# Northern District of Georgia

Kimberly Williams v. American Medical Systems, Inc., et al., C.A. No. 1:11-02782 Cynthia Daniel, et al. v. American Medical Systems, Inc., C.A. No. 1:11-03261 Holly Johnson, et al. v. American Medical Systems, Inc., C.A. No. 1:11-03925 Patricia Ledford, et al. v. American Medical Systems, Inc., C.A. No. 1:11-03926 Lynn Pope, et al. v. American Medical Systems, Inc., C.A. No. 1:11-03928 Laurie Schultz v. American Medical Systems, Inc., C.A. No. 1:11-03929 Sonya Waren, et al. v. American Medical Systems, Inc., C.A. No. 2:11-00310 Tammy Powell, et al. v. American Medical Systems, Inc., C.A. No. 3:11-00159 Maritza Reneau, et al. v. American Medical Systems, Inc., C.A. No. 3:11-00180

#### Western District of Louisiana

Patsy J. Brandao, et al. v. American Medical Systems Holdings Inc., et al., C.A. No. 5:11-01767

JoAnn B. Pickard v. American Medical Systems Inc., et al., C.A. No. 5:11-01845

#### District of Maryland

Robin Dahl v. American Medical Systems, Inc., C.A. No. 1:11-02925

#### District of Minnesota

Amy Wells, et al. v. American Medical Systems, Inc., C.A. No. 0:11-02141 Bobbie Fearn, et al. v. American Medical Systems, Inc., C.A. No. 0:11-02502 JoAnn Hill v. American Medical Systems, Inc., C.A. No. 0:11-02589

#### MDL No. 2325 Schedule A (Continued)

## District of Nevada

Carol S. Austin-Fink v. American Medical Systems, Inc., C.A. No. 2:09-01981 Connie Erwin, et al. v. American Medical Systems, Inc., et al., C.A. No. 2:11-01475 Debra Grumbles v. American Medical Systems, Inc., C.A. No. 2:11-01582

#### Middle District of North Carolina

Tamara Tucker, et al. v. American Medical Systems, Inc., et al., C.A. No. 1:11-00974

#### Western District of Oklahoma

Lisa Berry v. American Medical Systems, Inc., et al., C.A. No. 5:11-00748 Tina Gordon v. American Medical Systems Holdings Inc., et al., C.A. No. 5:11-01259 Jennifer Gaines, et al. v. American Medical Systems, Inc., C.A. No. 5:11-01299

## Eastern District of Pennsylvania

Paulette Lewis v. American Medical Systems, Inc., C.A. No. 2:11-05445 Kathleen Craig, et al. v. American Medical Systems, Inc., C.A. No. 2:11-05462 Linda Osman, et al. v. American Medical Systems, Inc., C.A. No. 2:11-05465 Helga White v. American Medical Systems, Inc., et al., C.A. No. 2:11-05520 Jennifer Heiser v. Endo Pharmaceuticals, C.A. No. 2:11-06651 Maggie McEwan, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06652 Kathleen Kenton, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06653 Bernella Meche v. Endo Pharmaceuticals, C.A. No. 2:11-06654 Holli Allen, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06655 Mary Howard, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06656 Joann Cosma, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06657 Evelyn Bonilla, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06658 Jane Mixon, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06659 Helen Reaves v. Endo Pharmaceuticals, C.A. No. 2:11-06660 Mary Smith, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06661 Joann Fosbenner, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06662 Marie Quigley, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06663 April Perdue, et al. v. Endo Pharmaceuticals, C.A. No. 2:11-06664 Valinda Aumiller v. Endo Pharmaceuticals, et al., C.A. No. 2:11-06804 Gina Kolar v. Endo Pharmaceuticals, et al., C.A. No. 2:11-06805

#### MDL No. 2325 Schedule A (Continued)

## Eastern District of Pennsylvania (Continued)

Candace Lyons v. Endo Pharmaceuticals, et al., C.A. No. 2:11-06806 Gearal Moneypenny, et al. v. Endo Pharmaceuticals, et al., C.A. No. 2:11-06807 Susan Cox v. Endo Pharmaceuticals, et al., C.A. No. 2:11-06808 Katherine Simmons v. Endo Pharmaceuticals, et al., C.A. No. 2:11-06809 Kaci Mitchell v. Endo Pharmaceuticals, C.A. No. 2:11-07131 Joycebeth Stoutamire v. Endo Pharmaceuticals, C.A. No. 2:11-07134 Gidget Crossett v. Endo Pharmaceuticals, C.A. No. 2:11-07135

## Western District of Texas

Sandra Colon v. American Medical Systems, Inc., C.A. No. 1:11-00872

## District of Utah

Jeanne Kramer, et al. v. American Medical Systems, Inc., C.A. No. 2:11-01004

## Western District of Washington

Diane Horton, et al. v. American Medical Systems, Inc., et al., C.A. No. 3:11-05780

## Southern District of West Virginia

Jessica Swaim, et al. v. American Medical Systems, Inc., et al., C.A. No. 2:11-00827 Virginia Johnson, et al. v. American Medical Systems, Inc., C.A. No. 2:11-00933

MDL No. 2325

# SCHEDULE B ACTIONS FOR WHICH TRANSFER IS DENIED

# Western District of Louisiana

Bette G. Waldroup, et al. v. Boston Scientific Corp., et al., C.A. No. 3:11-01854

District of Minnesota

Marsha Flight, et al. v. American Medical Systems, Inc., et al., C.A. No. 0:11-01761

Southern District of West Virginia

Fronde Culbertson, et al. v. C. R. Bard, Inc., et al., C.A. No. 2:11-00796

#### SCHEDULE C

#### Middle District of Alabama

Kimberly Barber, et al. v. Boston Scientific Corp., C.A. No. 2:11-00952

# Northern District of Alabama

Anna Buchanan, et al. v. Boston Scientific Corp., C.A. No. 2:11-03946 Mary Nalley, et al. v. Boston Scientific Corp., C.A. No. 4:11-03521 Ava Kirkpatrick v. Boston Scientific Corp., C.A. No. 5:11-03759

#### District of Arizona

Catherine A. Avent v. Boston Scientific Corp., C.A. No. 2:11-02280

## Central District of California

Sherry Herkal v. Boston Scientific Corp., et al., C.A. No. 2:11-08678

#### Northern District of California

Michelle Spence, et al. v. Boston Scientific Corp., C.A. No. 3:11-04961

# Southern District of Florida

Marta Iglesias, et al. v. Boston Scientific Corp., C.A. No. 1:11-24263

## Northern District of Georgia

Tami Goodson v. Boston Scientific Corp., C.A. No. 1:11-03023 Geraldine Bailey, et al. v. Boston Scientific Corp., C.A. No. 1:11-03981 Nicole Preston, et al. v. Boston Scientific Corp., C.A. No. 1:11-03982

## Western District of Louisiana

Minnie V. Mann v. Boston Scientific Corp., C.A. No. 3:11-01785 Anita M. Jolly, et al. v. Boston Scientific Corp., C.A. No. 3:11-01871 Amanda Powell, et al. v. Boston Scientific Corp., C.A. No. 3:11-01876

## MDL No. 2326 Schedule C (Continued)

# Western District of Louisiana (Continued)

Nancy K. Williams v. Boston Scientific Corp., et al., C.A. No. 3:11-01938 Karen S. Weller v. Boston Scientific Corp., C.A. No. 5:11-01696

## Western District of North Carolina

Patsy Meadows, et al. v. Boston Scientific Corp., C.A. No. 5:11-00143

Western District of Oklahoma

Terre Hammonds v. Boston Scientific, Inc., C.A. No. 5:11-00663

## District of South Carolina

Donna Beatty, et al. v. Boston Scientific Corp., C.A. No. 2:11-03147 Lisa Daniels v. Boston Scientific Corp., C.A. No. 3:11-02849

# Middle District of Tennessee

Tammy L. Kennamore v. Boston Scientific Corp., C.A. No. 3:11-01064

Western District of Texas

Leona Webb, et al. v. Boston Scientific Corp., C.A. No. 1:11-00873 )

Southern District of West Virginia

Brenda Moyer, et al. v. Boston Scientific Corp., C.A. No. 2:11-00810

#### **SCHEDULE D**

#### Northern District of Florida

Barbara Dykes v. Ethicon, Inc., et al., C.A. No. 3:11-00564

## Southern District of Florida

Susan Thaman, et al. v. Ethicon, Inc., C.A. No. 2:11-14390

#### Middle District of Georgia

Amy Holland, et al. v. Johnson & Johnson, et al., C.A. No. 3:11-00135 Carrie Smith v. Ethicon, Inc., et al., C.A. No. 5:11-00467

#### Northern District of Georgia

Iris Geraldine Carr, et al. v. Ethicon, Inc., et al., C.A. No. 1:11-02217 Cathy Warlick, et al. v. Ethicon, Inc., et al., C.A. No. 1:11-02758 Doris Jackson v. Johnson & Johnson, et al., C.A. No. 1:11-03903 Quillan Garnett, et al. v. Johnson & Johnson, et al., C.A. No. 1:11-03904 Kathy Barton v. Gynecare, Inc., et al., C.A. No. 3:11-00176

#### Southern District of Georgia

Mary Luellen Kilday, et al. v. Johnson & Johnson, et al., C.A. No. 4:11-00286 Janice Swaney v. Johnson & Johnson, et al., C.A. No.4:11-00287 Mary F. Cone v. Ethicon, Inc., et al., C.A. No. 5:11-00110

#### District of Kansas

Joy Essman, et al. v. Ethicon, Inc., et al., C.A. No. 2:11-02595

# Eastern District of Louisiana

Linda B. Ryan v. Johnson & Johnson, Inc., et al., C.A. No. 2:11-02751

## Western District of Louisiana

Teri Key Shively, et al. v. Johnson & Johnson, et al., C.A. No. 3:11-00362 Terrie S. Gregory, et al. v. Johnson & Johnson Inc., et al., C.A. No. 3:11-01768

## MDL No. 2327 Schedule A (Continued)

# Western District of Louisiana (Continued)

Tina Morrow, et al. v. Johnson & Johnson Inc., et al., C.A. No. 3:11-01866 Susan C. Hayes, et al. v. Johnson & Johnson Inc., et al., C.A. No. 3:11-01897 Charlene Logan Taylor v. Johnson & Johnson Inc., et al., C.A. No. 5:11-01894 Shirley Carroll, et al. v. Johnson & Johnson Inc., et al., C.A. No. 5:11-01937

## Southern District of Mississippi

Polly Middlebrook v. Ethicon, Inc., C.A. No. 4:11-00169

#### Western District of Missouri

Sandra L. Woolfe v. Ethicon, Inc., et al., C.A. No. 4:11-01040

## District of New Jersey

Caryn Bienstock v. Ethicon, Inc., et al., C.A. No. 3:11-04080

#### Northern District of New York

Kathleen Wolfe v. Ethicon, Inc., C.A. No. 6:11-00180

#### Northern District of Ohio

Judy White, et al. v. Ethicon, Inc., et al., C.A. No. 1:11-01562 Joann Heather, et al. v. Ethicon, Inc., et al., C.A. No. 5:11-02012

# Southern District of Ohio

Sharon Boggs, et al. v. Ethicon, Inc., C.A. No. 1:11-00516

#### Eastern District of Pennsylvania

Joanna Jacobson v. Ethicon, Inc., C.A. No. 2:11-05591 Rose Gomez, et al. v. Ethicon, Inc., C.A. No. 2:11-05625 Amanda Deleon, et al. v. Ethicon, Inc., C.A. No. 5:11-05538

## MDL No. 2327 Schedule A (Continued)

# Western District of Pennsylvania

Deborah A. Smith v. Ethicon, Inc., C.A. No. 1:11-00279

# District of South Carolina

Charlotte Hargrove v. Johnson & Johnson, et al., C.A. No. 2:11-03242

# Eastern District of Tennessee

Helen Brown, et al. v. Johnson & Johnson, et al., C.A. No. 3:11-00483

# District of Utah

Carol Dimock v. Ethicon, Inc., et al., C.A. No. 2:11-01048

# Western District of Washington

Dawna Hankins v Ethicon, Inc., C.A. No. 2:11-01635

## Southern District of West Virginia

Wilma Johnson v. Ethicon, Inc., C.A. No. 2:11-00809

## Eastern District of Wisconsin

Deborah Lozano, et al. v. Ethicon, Inc., C.A. No. 2:11-00836