

**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 in the *Whittington* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Whittington* to the Western District of Pennsylvania for inclusion in MDL No. 3014. Defendant Philips RS North America LLC (identified in the complaint as Philips Respironics, Inc.)¹ opposes the motion.

Plaintiff, who is proceeding *pro se*, does not advance any specific arguments against transfer. Instead, he restates the claims asserted in his complaint—namely, that Philips manufactured a Continuous Positive Airway Pressure (CPAP) device that was defective because it contained polyester-based polyurethane (PE-PUR) sound abatement foam that may degrade into particles or off-gas volatile organic compounds, and that this defect injured plaintiff. This argument, though, merely establishes that *Whittington* shares common questions of fact with the actions in the MDL, all of which similarly allege injuries caused by the alleged defect in Philips CPAP devices, which were the subject of a recall issued on June 14, 2021. *See In re Philips Recalled CPAP, Bi-Level PAP, and Mech. Ventilator Prods. Liab. Litig.*, 568 F. Supp. 3d 1408, 1409–10 (J.P.M.L. 2021) (centralizing actions alleging that certain CPAP, Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices containing PE-PUR foam, which may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury).

Transfer of an action 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.”). Here, plaintiff likely will benefit from the extensive discovery underway in the MDL and the efforts of lead counsel to advance the litigation. Moreover, “since Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise.” *In re Cygnus Telecomms. Tech., LLC, Pat. Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001).

¹ According to defendant, Philips Respironics Inc. is not an existing entity, and the operating company and real party in interest in this case is Philips RS North America LLC.

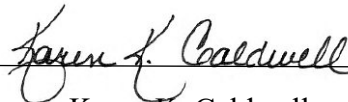
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Plaintiff also states, in conclusory fashion, that the Panel lacks jurisdiction over his case. This argument is not well taken. Plaintiffs' action remains in the transferor court until such time as the Panel transfers the action to the MDL. *Cf. In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, MDL No. 2873, __ F. Supp. 3d __, 2023 WL 2875926, at *1 (J.P.M.L. Apr. 10, 2023) (“But the tribunal before which *State of California* is pending is the Northern District of California, not the United States Judicial Panel on Multidistrict Litigation, and that will remain so unless and until the Panel’s transfer order is filed in the transferee court.”). To the extent plaintiff means to assert that jurisdiction is lacking in the transferor court, such jurisdictional objections generally do not present an impediment to transfer. *See, e.g., In re Prudential Ins. Co. of Am. Sales Prac. 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.”).

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. *See In re Philips*, 568 F. Supp. 3d at 1409–10. Like the actions in the MDL, *Whittington* will involve factual questions relating to the recall of the Philips CPAP devices and the alleged defect that can result in PE-PUR foam degrading or off-gassing and injuring the user.

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



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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LIABILITY LITIGATION**

MDL No. 3014

SCHEDULE A

Southern District of Ohio

WHITTINGTON v. PHILIPS RESPIRONICS, INC., C.A. No. 2:23-03140