

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: ANGIODYNAMICS AND)
NAVILYST PORT CATHETER) MDL DOCKET NO. _____
PRODUCTS LIABILITY)
LITIGATION)**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION TO TRANSFER
ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR
CONSOLIDATED PRETRIAL PROCEEDINGS**

I. INTRODUCTION

Pursuant to 28 U.S.C § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (“the Panel”), Movants Kimberly Boyer, Danny Brierly, Charmaine Brockway, Serena Coleman, Ramsey Ghabra, Noelia Hernandez-Ayala, Maxwell Jones, Patricia Kitchen, Brandon Mcmillian, Claude Preston, Rosa Timmons, Stephen Zuppo, Gage Colyer and William Colyer on his behalf, Lindsay Baldwin, JaiTonia Cain Harvey, L.L., a minor by and through her Next Friend and father John Larson, Robert Barnes, Jessica Garst, and Kimberly Howard (“Movants”) respectfully submit this Memorandum in Support of their Motion to Transfer Actions pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings. Movants seek transfer of all cases identified in the Schedule of Actions, attached hereto as Exhibit “A”, to a single District Court selected by this Panel, as well as the transfer of any later filed cases against the same Defendants, AngioDynamics, Inc. and/or Navilyst Medical, Inc. (“Defendants”) that involve similar facts or claims.

Consolidation and coordination of these actions is appropriate under 28 U.S.C. § 1407. The Actions involve common issues of fact and law. Transfer will further benefit and serve the convenience of the parties, attorneys, and witnesses involved. Transfer will also promote the just and efficient conduct of the Actions. The objectives of transfer iterated by the Manual for Complex

Litigation § 20.131 all support consolidation in this instance. The United States District Court for the Western District of Missouri is the most appropriate jurisdiction for the consolidated proceedings of the Actions because of its central location and ability to efficiently and effectively run a multi-district litigation proceeding.

II. BACKGROUND

The cases on the Exhibit A Schedule of Actions all allege product liability claims for personal injuries caused by failures of implanted port catheter medical device products manufactured by Defendants (hereinafter collectively, the “Actions”). Movants comprise 21 Plaintiffs with pending cases against Defendants involving their port catheter products. Their cases are currently pending in 14 different United States District Courts across the country.

Defendants design and manufacture a variety of port catheter products at issue in the Actions (hereinafter collectively, “Angio Port Catheter Products”). The Angio Port Catheter Products are implantable vascular access medical devices that are implanted under a patient’s skin in the chest area and are designed to administer intravenous therapies, including medication, fluids, parenteral nutrition, and blood products. The Angio Port Catheter Products consist of an injection port reservoir, which is connected to a catheter tube. The tube then acts as a conduit for the intravenous therapies injected into the port reservoir component of the product. Implanted ports are commonly used in chemotherapy treatment for patients with cancer or for those with autoimmune disorders. The Angio Port Catheter Products are meant for long-term use; Defendants have not given any warnings or indications that they should be removed after a certain period of time after implantation.

All of the Actions on the Exhibit A Schedule of Actions carry claims for personal injuries caused by the Angio Port Catheter Products due to alleged tortious conduct engaged in by

Defendants concerning these products. The injuries that are the subjects of the Actions involve infections, fractures, or blood clots the Movants claim were caused by defects inherent in the Angio Port Catheter Products. The legal claims pursued sound in product liability and include, but are not limited to, claims for negligence in the design, manufacture, testing, sale, and marketing of the Angio Port Catheter Products; design defect; failure to warn; breach of implied warranty; breach of express warranty; the violation of state consumer protection laws; fraudulent concealment; and punitive damages.

III. LEGAL STANDARD

The creation of a multidistrict litigation (“MDL”) is appropriate when “civil actions involving one or more common questions of fact are pending in different districts,” and transfer will serve “the convenience of parties and witnesses” and “promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a); *see also, In re Nifedipine Antitrust Litigation*, 266 F. Supp. 2d 1382, 1382-83 (J.P.M.L. 2003) (finding transfer and consolidation appropriate for seven actions pending in two different district courts that involved allegations with shared factual questions).

IV. ARGUMENT

Transfer and consolidation of the Actions involving Angio Port Catheter Products is appropriate under Section 1407. They all involve common issues of fact and law; the Actions are pending in multiple different district courts across the country; and transfer will benefit the parties, witnesses, and the courts and will ensure the Actions are justly and efficiently conducted going forward. Transfer is further appropriate to the Western District of Missouri due to its geographically central location and its ability to effectively run a multi-district litigation proceeding.

A. The Actions Involve Common Issues of Fact & Law.

All of the Actions involve common questions of fact and law. At the heart of and at issue in all of these matters are the Angio Port Catheter Products and claims for injuries stemming from the same. The injuries alleged are the same or substantially similar and involve either claims for infections, fracture, or blood clot injuries caused by the devices. The underlying complaints discuss and allege problems relating to the materials used in and the design of the Angio Port Catheter Products that led to such injuries. All of the Actions involve common questions of fact relating to the design, development, testing, manufacture, marketing, sale, and adequacy of warnings concerning the Angio Port Catheter Products. More specifically, the Actions allege that the Defendants deceptively marketed and sold a dangerous medical device that caused serious injuries to patients who have had the devices implanted. These common facts alone warrant consolidation.

The legal claims asserted by Movants are also the same or substantially similar. Movants have alleged claims for negligence in Defendants' design, manufacture, and sale of the Angio Port Catheter Products; design defect; failure to warn; breach of implied and express warranties; fraudulent concealment; state consumer protection and deceptive trade practices act claims; and punitive damages. This will require the courts' determination of whether Defendants violated the same or similar laws, namely those involving product liability, warranty, and tort, all of which concern the shared core issues surrounding the design, manufacture, and sale of the Angio Port Catheter Products.

B. Transfer will Serve the Convenience of the Parties and Witnesses and will Promote the Just and Efficient Conduct of the Actions.

Transfer and centralization of the Actions will serve the convenience of the parties and ensure the Actions move forward efficiently. The Manual for Complex Litigation describes the objectives of transfer, and accordingly, how transfer is appropriate when these elements can be

accomplished: 1) preventing duplicative discovery; 2) avoiding inconsistent rulings and conflicting schedules; 3) reducing litigation cost; and 4) saving time and effort of the parties, attorneys, witnesses, and the courts involved. Manual for Complex Litigation (Fourth), § 20.131, at 220 (2004) (citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968)); see also, *In re Ethicon Physiomesb Flexible Composite Hernia Mesh Products Liability Litigation*, 254 F. Supp. 3d 1381, 1382 (J.P.M.L. 2017) (noting centralization is meant to “eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary” in finding for consolidation of 18 actions pending across 10 districts); *In re Bristol Bay, Salmon Fishery Antitrust Litig.*, 424 F. Supp. 504, 506-07 (J.P.M.L. 1976) (finding for consolidation of four cases pending in two districts “to prevent duplicative discovery, eliminate the possibility of conflicting pretrial rulings and streamline the remainder of the pretrial proceedings”). All of the above objectives would be met by consolidating the Actions here.

1. Transfer will eliminate duplicative discovery and avoid placing undue burden and expense on the parties.

Undoubtedly, given the similar claims made by plaintiffs in the Actions, the parties will engage in the same or similar discovery. This will involve not only similar and overlapping written discovery requests but also depositions of the same witnesses in multiple actions, particularly as it pertains to Defendants. The Movants and plaintiffs involved in the Actions will inevitably want to conduct depositions of Defendants’ current and former employees and corporate representatives with knowledge of the design, manufacture, sale, and approval of the Angio Port Catheter Products at issue. These general discovery matters are shared amongst all the Actions. Without centralization, many of these witnesses would likely be subjected to having their deposition taken multiple times. Having these actions go forward at an individual, unconsolidated level in multiple districts would inevitably result in wasted time, resources, work, and expense for

not only the parties and their counsel, but also the court system as a whole. Transfer and centralization are necessary to avoid such a result.

2. Transfer and centralization will avoid inconsistent rulings and pretrial schedules.

As it stands now, there are 23 different cases total involving Angio Port Catheter Products pending in 16 different districts across the country that involve product liability, personal injury claims against Defendants. The cases are in various stages, but most are relatively early on. Pertaining to Movants' cases in particular, the parties have not completed substantial discovery, except for serving Rule 26(a)(1) initial disclosures in some of those matters. Defendants have filed motions to dismiss in many, if not all, of the Actions. Many of those motions await rulings. There are also a multitude of different scheduling orders, pending protective orders and ESI protocols the parties either have submitted or plan on submitting, and a variety of other pretrial matters at issue going forward, including establishing deposition protocols, given the early stage the majority of these cases are in.

This situation is ripe for creating inconsistent rulings and scheduling orders that will unnecessarily burden the courts and all parties involved. Given the scenario with so many actions pending and so many different district courts involved, the Actions are best suited to go in front of one judge for resolution and determination of these pretrial matters. *See Bristol Bay*, 424 F. Supp. at 506 (noting the Panel prefers to place actions under the control of a single judge to ensure the objectives of Section 1407 are met if the actions are otherwise appropriate for transfer).

These Actions have only recently been filed, and prompt centralization minimizes the risk of inconsistent rulings. As the Panel recognized in *Camp Lejeune*, delaying centralization “only invites inconsistent rulings,” which Section 1407 is designed to avoid. *In re Camp Lejeune, North Carolina Water Contamination Litigation*, 763 F. Supp. 2d 1381, 1382 (J.P.M.L. 2011).

Moreover, early centralization of these Actions avoids potential prejudice to the parties. Only one substantive ruling on a motion to dismiss has been made in the Actions to date, and the majority of the cases have yet to conduct any discovery beyond exchanging initial disclosures. The timing of the filing of these Actions and this Motion places these cases in the best position to reap the full benefits of Section 1407.

Early centralization will maximize the benefits of the transfer and coordination under Section 1407. As discussed above, Movants will seek substantially the same discovery from Defendants; review the same documents produced in discovery; take depositions of the same corporate officers and other witness, as well as of the same or substantially similar expert witnesses; and will involve the same questions of law surrounding expert qualifications under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and issues raised under motions for summary judgment. *See infra.*, at Sec. III.(B)(1). Coordination of these Actions will avoid unnecessarily duplicative discovery across multiple Actions and eliminate potentially conflicting or inconsistent rulings. *See In re Zimmer Nexgen Knee Implant Prods. Liab. Litig.*, 802 F. Supp. 2d 1374, 1376 (J.P.M.L. 2011) (“Centralization under Section 1407 will eliminate duplicative discovery, [and] prevent inconsistent pretrial rulings on *Daubert* and other pretrial issues.”); *In re Transocean Tender Offer Sec. Litig.*, 415 F. Supp. 382, 384 (J.P.M.L. 1976) (“[T]he likelihood of motions for partial dismissal and summary judgment in all three actions grounded at least in part on [a common issue] makes Section 1407 treatment additionally necessary to prevent conflicting pretrial rulings and conserve judicial effort.”).

There are—and will continue to be—numerous actions with common questions of fact filed in multiple districts involving Angio Port Catheter Products. Given the common nature of these cases, the number of current actions, and the likely number of additional actions to be filed across the country, transfer and coordination are necessary to avoid “multiplied delay, confusion, conflict,

inordinate expenses and inefficiency.” *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 495 (J.P.M.L. 1968). The high likelihood of inconsistent judicial rulings affecting the 20 currently existing actions in multiple districts, and the possible scores more to be filed, is precisely why Section 1407 was enacted.

Transfer is warranted in this instance to avoid multiple courts reaching contrary conclusions and inconsistent scheduling of pretrial matters involved in the Actions and to avoid subjecting litigants to conflicting responsibilities and obligations.

3. Transfer will promote efficiency and judicial economy, reduce litigation costs, and save the time and effort of the parties, attorneys, witnesses, and the courts involved.

Movants’ claims are based on materially identical conduct of Defendants concerning the Angio Port Catheter Products. Without centralization under Section 1407, the actions would inevitably proceed in a manner that would be highly inconvenient for the courts and parties. The attorneys would be briefing the same issues numerous times in different courts; the same witnesses would be called for depositions in numerous cases; and third parties would be asked to produce the same or similar documents in discovery across multiple actions. This would inevitably entail substantially more expense and time for the attorneys and parties involved and would ultimately be an inefficient use of judicial resources.

Section 1407 is designed to conserve the resources of the parties, attorneys, witnesses, and courts, and transfer here would indeed accomplish such a result in placing the matters in front of one judge to ensure they are justly and efficiently conducted going forward. *See In re Brimonidine Patent Litigation*, 507 F. Supp.2d 1381, 1382 (J.P.M.L. 2007) (finding in favor of transfer so actions may be assigned “to a single judge who can formulate a pretrial program that ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution

of all actions to the overall benefit of the parties and expeditious resolution of all actions to the overall benefit of the parties and the courts”). Transfer is warranted in this instance to avoid subjecting litigants to conflicting responsibilities and obligations and to over-burden the parties with having to do the same or substantially similar work across multiple cases.

4. Informal coordination pursuant 28 U.S.C. § 1404 is inappropriate and has previously been rejected by Defendants.

On April 12, 2024, counsel for Movants contacted counsel for Defendants to request informal coordination of several of the Actions that were existing at the time via transfer pursuant to 28 U.S.C. § 1404 to promote efficiency in discovery and the convenience of the parties. Counsel for Defendants responded that Defendants were not agreeable to such transfer and coordination.

In light of this, informal coordination is not a practical possibility. Regardless of this previous attempt and Defendants’ rejection, informal coordination is inappropriate here given the continued number of actions being filed involving Angio Port Catheter Products that involve a growing number of judicial district courts. Coordination pursuant to 28 U.S.C. § 1407 is necessary to conserve judicial resources and serve the convenience of the parties.

C. These Actions Should Be Transferred to the Western District of Missouri.

Plaintiffs urge the Panel to transfer the Actions to the Western District of Missouri, where a court with Multidistrict Litigation experience can efficiently, justly, and capably manage them. The Western District of Missouri is the optimal court to manage a complex product liability litigation like this one.

In determining an appropriate transferee forum, the Panel balances several factors, including the experience, skill, and caseloads of the available judges; the number of cases pending in the jurisdiction; convenience of the parties; location of the witnesses and evidence; and the minimization of cost and inconvenience to the parties. *See, e.g., In re Wheat Farmers Antitrust*

Class Action Litig., 366 F.Supp. 1087, 1088 (J.P.M.L. 1973); *In re Preferential Drugs Prods. Pricing Antitrust Litig.*, 429 F.Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig.*, 206 F.Supp. 1376, 1378 (J.P.M.L. 2002); Manual of Complex Litigation (Fourth) (2004), § 20.131, at 221. Factors including experience, number of pending cases, available resources, and convenience to the parties and witnesses all weigh heavily in favor of transferring all related cases to the Western District of Missouri.

The Western District of Missouri judges are well-versed in handling multidistrict litigations and have guided numerous MDLs to successful partial or complete resolutions. Examples include: *Dollar General Corp. Motor Oil Marketing and Sales Practices Litigation*, MDL Number 16-md-2709; *Smitty's/Cam2 303 Tractor Hydraulic Fluid Marketing, Sales Practices and Products Liability Litigation*, MDL Number 20-md-2936; and *T-Mobile Customer Data Security Breach Litigation*, MDL Number 21-md-3019. These are but a few of the examples showing that the Western District of Missouri is an efficient, well-run District with impressive case-processing statistics. The Western District of Missouri has had a proven track record with a short median time from case filing to disposition for civil cases.¹

The Panel has also held that the pendency of a related action in a particular forum is an important factor in selecting the forum. See *In re: Sugar Industry Antitrust Litig.*, 395 F.Supp. 1271, 1274 (J.P.M.L. 1975) (citations omitted). Of the 20 Actions currently on file, three are on file in the Western District of Missouri. Exh. A, Schedule of Actions (*Larsen v. Angiodynamics, Inc., et al.*, Case No. 2:24-cv-04114; *Colyer, et al. v. Angiodynamics, Inc., et al.*, Case No. 2:24-cv-04121; *Baldwin v. Angiodynamics, Inc., et al.*, Case No. 3:24-cv-05055). The remaining cases not pending

¹ See Federal Judicial Caseload Statistics; U.S. District Courts—Median Time From Filing to Disposition of Civil Cases, by Action Taken—During the 12-Month Period Ending March 31, 2022 (<https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2022/03/31>).

before the Western District of Missouri have been filed across 15 District Courts, with no other district presiding over more than two related Actions. *See* David F. Hen, Multidistrict Litigation Manual § 6:8 (2010) (“[T]he Panel will not normally transfer actions to a district in which no action is then pending and the panel clearly considers the number of actions pending in various districts to determine the selection.”).

In addition to other factors, consolidation in the Western District of Missouri offers a convenient and affordable location for both the Plaintiffs and Defendants in these Actions. Kansas City has a new \$1.5 billion airport opened in February 2023 that has substantially improved air travel into and out of the Kansas City metropolitan area. Kansas City’s central location provides direct flights from more than 50 U.S. cities daily. Kansas City’s centralized geographic location will make it an easily accessible destination for the parties, witnesses, experts, and others involved in this litigation. Indeed, the Panel has previously acknowledged the Western District of Missouri as “centrally located and easily accessible, making it a convenient forum for ... nationwide litigation.” *In re Smittys*, 466 F. Supp. 3d at 1382.

Each judge serving in the Western District of Missouri is eminently qualified to oversee these Actions, and several of the judges in the District have already demonstrated the ability to steer an MDL on a prudent course. The Honorable Brian C. Wimes is well-suited to oversee this litigation. Judge Wimes is vastly experienced, as he has been on the federal bench for approximately 13 years. Judge Wimes has overseen complex litigations including at least two MDL cases. *See In re T-Mobile Customer Data Security Breach Litigation*, 576 F.Supp.3d 1373, 1375 (J.P.M.L. 2021) (data breach case involving more than 54 million potential claimants); *In re National Ski Pass Insurance Litigation*, 492 F.Supp.3d 1352, 1355 (J.P.M.L. 2020). In *T-Mobile*, Judge Wimes shepherded the case to resolution just seven months after he received the assignment, demonstrating his ability to efficiently resolve cases and decide complex issues, while conserving

judicial resources and the time and expense required of litigants.

The Actions would also be prudently and efficiently managed if assigned to the Honorable Stephen R. Bough. Judge Bough is an experienced jurist with a professional background involving substantial complex litigation. Judge Bough's comprehensive and unique experience, including presiding over other MDL cases, makes him an excellent choice to oversee this litigation. Judge Bough has shown particular skill in efficiently shepherding cases through discovery and trial to reach final adjudication of issues. His guidance would be instrumental in these cases, which are expected to involve voluminous discovery and complex questions of law. The Panel previously expressed confidence in Judge Bough's ability to steer a complex MDL on a prudent course given his experience as a jurist and ability and willingness to manage complex litigation efficiently. *In re Smitty's*, 466 F. Supp. 3d at 1382.

Additionally, Judge Bough's knowledge and expertise regarding complex MDL litigation is demonstrated in the article he co-authored with Elizabeth Chamblee Burch, "Collected Wisdom on Selecting Leaders and Managing MDLs," where he discusses, among other things, the importance of cultivating diversity when choosing MDL leadership. Even more, Judge Bough has actively participated in continuing legal education programs addressing the uniqueness of MDL litigation. One recent example, "Hot Topics in MDLs," presented on March 29, 2023, allowed Judge Bough and other presenters to directly address some current topics related to MDL litigation including early vetting and the process of determining appropriate MDL leadership.

V. CONCLUSION

Consolidation and coordination of these actions is appropriate under 28 U.S.C. § 1407. The Actions involve common issues of fact and law arising from product liability, personal injury claims against Defendants concerning their port catheter products. Transfer will avoid inconsistent

rulings and serve the convenience of the parties, attorneys, witnesses, and the court system overall. Transfer will also promote the just and efficient conduct of the Actions. The objectives of transfer iterated by the Manual for Complex Litigation § 20.131 all support consolidation in this instance. Movants respectfully request transfer of all pending and future related actions to the Western District of Missouri before either the Honorable Brian C. Wimes or the Honorable Stephen R. Bough. Such district is the most appropriate location for the consolidated proceedings of the Actions because of its central location and ability to effectively run a multi-district litigation proceeding.

Dated: July 25, 2024

Respectfully submitted,

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