

suggesting remand or transferring the cases as soon as any objections to the proposed remand/transfer venues have been resolved.

Under 28 U.S.C. § 1407(a), only the Judicial Panel on Multidistrict Litigation can remand a case that was transferred to this court. But the Panel transferred only one of the five cases seeking remand, *Price v. Biomet*, 3:14-CV-275. The other cases were filed directly in this court pursuant to the February 15, 2013 case management order [Doc. No. 242], which provides that “upon completion of all [applicable] pretrial proceedings...this court will, pursuant to 28 U.S.C. § 1404(a), transfer the case to a federal district court of proper venue, as defined in 28 U.S.C. 1391[.]” [Doc. No. 242].

Because the plaintiffs seek remand before the conclusion of pretrial proceedings, they bear the burden of showing that good cause exists for remanding (or transferring) their case now. See In re Maxim Integrated Products, Inc., MDL No. 2354, No. 12-244, 2015 WL 1757779, at *3 (W.D. Pa. Apr. 17, 2015); In re S. Cent. States Bakery Products Antitrust Litig., 462 F.Supp. 388, 390 (Jud. Pan. Mult. Lit. 1978). The inquiry focuses on “whether the case will benefit from further coordinated proceedings as part of the MDL.” In re Ins. Brokerge Antitrust Litig., Civ. Nos. 04-5184, 05-5696, 2009 WL 530965, at *2 (D.N.J. March 3, 2009) (citing In re Bridgestone/Firestone, Inc., 128 F.Supp.2d 1196, 1197 (S.D. Ind. 2001)). The purpose of pretrial consolidation or coordination is “for the convenience of the parties and witnesses and [to] promote the just and

efficient conduct of such actions.” 28 U.S.C. § 1407(a). Remand isn’t appropriate if continued consolidation will “eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.” In re Silica Prods. Liability Litig., 398 F.Supp.2d 563, 668 (S.D. Tex. 2005) (citing In re Heritage Bonds Litig., 217 F.Supp.2d 1369, 1370 (Jud. Pan. Mult. Lit. 2002)).

This isn’t the first time the *Price* and *Gearon* plaintiffs have asked to be severed from the MDL docket. When I denied their original motions to remand and to dismiss in 2016, I believed that the plaintiffs might still benefit from the general expert discovery that was being conducted and hoped that the parties would expand the scope of that discovery to include the Taper, ReCap, and MoP devices. I also believed then that continued consolidation was necessary to prevent inconsistent rulings on legal issues that had yet to be resolved. That is no longer the case.

When I denied Biomet’s motion for summary judgment in the Taper, ReCap and MoP cases in February 8, 2018, I gave the plaintiffs in *Price* and *Gearon* the option of either moving to remand or to reopen discovery, so they could take device-specific expert depositions. I made no mention of remand in *White*, *Glynn*, and *Petrash* because case-specific discovery was still ongoing in those cases and wasn’t scheduled to close until September 2018, so there was still time to take device-specific expert testimony. But I didn’t rule out the possibility of a remand,

and the plaintiffs in all five cases have elected to seek remand, and complete discovery in their local jurisdictions.

The plaintiffs undoubtedly have benefitted from the generic discovery that has been completed since 2016, but their efforts to obtain essential device-specific discovery have met with opposition from both Biomet and the Plaintiffs' Steering Committee, and they have very little else to show for the additional time spent here. Device-specific expert discovery remains to be conducted, but the time for doing so in these proceedings has passed. Any device-specific and case-specific discovery that remains to be done in these cases can be completed following remand, with little or no prejudice to the defendants.

The only legal issues presented have involved spoliation, statutes of limitations and statutes of repose, and there's no indication that Biomet intends to raise those issues in the five remaining Taper, ReCap and MoP cases before the rolling remands contemplated in the April 23, 2018 scheduling order begin. *See* [Doc. Nos. 3553 and 3573]. Even if it did, at this stage in the proceedings and given my prior rulings on the issues, the district courts to which the cases are remanded or transferred are in as good a position, if not better, than I am to decide those issues.

The same can be said for the motion to consolidate *Glynn* and *White*. The court to which those cases will be transferred is in a far better position than I am

to decide whether, and to what extent, they should be consolidated, rather than simply centralized as they were in this court.

At this late stage in the proceedings, the harm that will result to the plaintiffs from further delay significantly outweighs any prejudice Biomet might suffer from having to defend on two fronts. The Taper, ReCap and MoP plaintiffs have been relegated to the sidelines long enough, and I can find no just reason to delay remand.

For the foregoing reasons:

(1) The motion for a suggestion of remand in *Price v. Biomet* [Doc. No. 170 in 3:14-CV-275] is GRANTED.

(2) The motions for suggestion of remand in *Gearon v. Biomet* [Doc. No. 163 in 3:14-CV-2099], *Glynn v. Biomet* [Doc. No. 95 in 3:15-CV-491], *Petrash v. Biomet* [Doc. No. 94 in 3:15-CV-545], and *White v. Biomet* [Doc. No. 74 in 3:16-CV-115] are construed as motions to transfer under 28 U.S.C. § 1404(a), and are GRANTED to the extent they seek transfer, without the limiting instruction proposed by Biomet.

(3) To the extent the plaintiffs in *Glynn v. Biomet* and *White v. Biomet* also seek to consolidate their cases before remand, their motions [Doc. No. 95 in 3:15-CV-491 and Doc. No. 74 in 3:16-CV-115] are DENIED.

(4) The Plaintiffs' Steering Committee, in cooperation with plaintiffs' local counsel, shall submit a list of the venues to which plaintiffs seek

remand or transfer by **June 13, 2018**, with any objections thereto to be filed on or before **June 20, 2018**.

(5) I will issue an order on or before **June 27, 2018** suggesting remand or transferring jurisdiction to the agreed upon venues, provided any objections have been resolved.

SO ORDERED.

ENTERED: May 30, 2018

/s/ Robert L. Miller, Jr.
Judge, United States District Court
Northern District of Indiana