

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MIRENA IUS LEVONORGESTREL-RELATED
PRODUCTS LIABILITY LITIGATION (NO. II)
This Document Relates To All Actions

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ORDER NO. 3

17-MD-2767 (PAE)

17-MC-2767 (PAE)

**ORDER REGARDING DIRECT FILING OF ACTIONS
IN THE SOUTHERN DISTRICT OF NEW YORK**

PAUL A. ENGELMAYER, District Judge:

I. Scope of the Order

This Order applies to claims brought by a U.S. citizen or resident based on usage or purchase of MIRENA® (levonorgestrel-releasing intrauterine system) within the United States in which the claimed injury is consistent with the Judicial Panel on Multidistrict Litigation’s April 6, 2017 Transfer Order and (i) currently are pending in this centralized multidistrict litigation (“MDL No. 2767”) or (ii) will be filed in, removed to or transferred to this Court (collectively, “the MDL Proceedings”).

II. Direct Filing of Cases in MDL 2767

A. Any plaintiff whose case would be subject to transfer to MDL No. 2767 may file her case in the Southern District of New York (“this District”) for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict Litigation’s April 6, 2017 Transfer Order.

B. Defendants will not challenge venue as to any such action filed directly in this District.

C. No Lexecon Waiver. For cases directly filed in this District, the Parties preserve and do not waive any and all rights under *Lexecon Inc. v. Milberg Weiss*, 523 U.S. 26 (1998) to have each case remanded to the district of traditional venue for trial.

D. The direct filing of any action in this District, pursuant to this Order, shall have no impact on choice of law that otherwise would apply to an individual case had it been originally properly filed in another district and transferred to this Court pursuant to 28 U.S.C. § 1407.

E. The inclusion of any action in *In Re: Mirena IUS Levonorgestrel-Related Products Liability Litigation (No. II)*, whether such action was originally filed in this District or elsewhere, shall not constitute a determination by this Court that jurisdiction or venue is proper in this District.

F. Nothing in this Order shall preclude the parties from agreeing, at a future date, to try cases filed pursuant to this order in this District.

G. Any complaint that is directly filed in this District for inclusion in MDL No. 2767 before this Court shall bear the following caption:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MIRENA IUS LEVONORGESTREL-RELATED
PRODUCTS LIABILITY LITIGATION (NO. II)

17-MD-2767 (PAE)

MDL No. 2767

-----X

JANE DOE,

COMPLAINT
AND JURY DEMAND

Plaintiff,

Civil Action No.: _____

vs.

XYZ CORPORATION and ABC COMPANY,

Defendants.

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H. Each case filed in this District for inclusion in MDL No. 2767 shall contain the following language concerning jurisdiction and venue:

Plaintiff(s) aver(s) that the federal judicial district in which Plaintiff's Mirena was inserted was [___]; and the federal judicial district in which Plaintiff

currently resides is []. But for the Order permitting direct filing into the Southern District of New York pursuant to Order No. __, plaintiff(s) would have filed her/their case(s) in the United States District Court for the [Insert Name of Court].

When electronically filing the pleadings, the signature block shall follow the below format:

RESPECTFULLY SUBMITTED,

/s/ Jane Doe

Jane Doe

NAME OF LAW FIRM

ADDRESS

TELEPHONE

FAX

EMAIL@EMAIL.com

Attorney for Plaintiff

I. The proper filing of a complaint in this District for inclusion in MDL No. 2767 pursuant to this Order shall stop the running of any statute of limitations, statute of repose, or prescriptive or preemptive period as if the complaint had been filed in an appropriate venue.


J. Any plaintiff that files a case in this District for inclusion in MDL No. 2767 must note on the civil cover sheet that the case is related to MDL No. 2767. Such a plaintiff must also file a statement of relatedness explaining why the plaintiff's claim falls within MDL No. 2767.

K. The allowance of filing in this District does not extend to cases that do not include an allegation of a claimed injury identified in the Judicial Panel on Multidistrict Litigation's April 6, 2017 Transfer Order. Upon notice from Bayer of an injury facially inconsistent with the Judicial Panel on Multidistrict Litigation's April 6, 2017 Transfer Order, a plaintiff has 14 days to provide a written statement that the claimed injury is consistent with the Transfer Order. If a plaintiff fails to comply, her case shall be transferred to the proper venue pursuant to 28 U.S.C. § 1404(a). All contested issues will be brought before the Court pursuant to a motion for suggestion of remand.

SO ORDERED.

Dated: June 15, 2017

New York, New York



PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE