BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: COVIDIEN HERNIA MESH PRODUCTS LIABILITY LITIGATION

MDL No.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR 28 U.S.C. § 1407 TRANSFER AND COORDINATION OF RELATED COVIDIEN HERNIA MESH PRODUCTS LIABILITY ACTIONS

In June 2020, the Covidien Defendants[1] petitioned the Panel to do what the Panel had done four times before in hernia mesh litigation: to create an MDL for the products liability actions existing and on the horizon.[2] The Panel denied the Covidien Defendants' petition at that time because "we are presented with just twelve cases today."[3] Some of those cases, the Panel observed, had been pending for two or three years, leaving it unpersuaded "under the present circumstances that the benefits of centralization outweigh the disruption to the pending actions."[4]

The Covidien Defendants predicted in 2020 that the number of cases would "balloon," but were prevented from explaining why we were confident in that prediction—namely, there were tolling agreements that, by their terms, precluded their disclosure. Now, as the tolling

---

1 The Covidien Defendants are Covidien LP, Covidien Holding Inc., Covidien, Inc., Covidien plc, Tyco Healthcare Group, Tyco International, Sofradim Productions SAS, Medtronic, Inc., and Medtronic USA, Inc. Defendants do not concede that all of these entities are proper parties, and many of them are not.

2 *See In re: Atrium Medical Corp. C-QUR Mesh Prods. Liab. Litig.*, 223 F. Supp. 3d 1355 (J.P.M.L. 2016); *In re: Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, 254 F. Supp. 3d 1381 (J.P.M.L. 2017); *In re: Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Prods. Liab. Litig.*, 316 F. Supp. 3d 1380 (2018). A decade earlier, the Panel established *In re Kugel Mesh Hernia Patch Products Liability Litigation*, 493 F. Supp.2d 1371 (J.P.M.L. 2007).

3 Order Denying Transfer ("2020 Order"), *In re: Covidien Hernia Mesh Prod. Liab. Litig.*, MDL No. 2953, Doc. 38 at 2.

4 *Id.*

agreements expire—more than 6,000 potential claims in total—the numbers are indeed beginning to balloon. Sixty-seven new actions are pending the District Court for the District of Massachusetts (with 29 cases filed in both December 2021 and January 2022, and 9 additional cases filed in February 2022). In total, there are now 73 federal cases: 67 in the District of Massachusetts plus 6 cases in 6 other districts (the Middle District Florida, Southern District of Florida, Eastern District of Louisiana, Western District of Missouri, District of New Jersey, and Northern District of Oklahoma).[5] Seventy-one of the 73 cases are still in the starting blocks, with no discovery having commenced (nor even motions to dismiss in the 67 newly-filed Massachusetts federal cases). And more cases are on the horizon: plaintiffs' counsel in Massachusetts federal court have said it is a "safe bet" that "at least 100" cases will be filed in that forum. Jan. 6, 2022 Hr'g Tr. 6–7, ECF No. 23, *Easom v. Covidien, Inc.*, No.1:21-cv-11985 (D. Mass.). Federal cases continue to be filed in other districts.

In addition to the newly-filed federal cases, the state of affairs in a Massachusetts state court coordinated proceeding has also changed. As of June 2020, this coordinated state court proceeding was just three months old, with approximately 100 cases. Since then, the litigation has grown to more than 4,700 cases, according to Plaintiffs' counsel.[6] Very few of those plaintiffs, however—a mere 55, or 1.7 percent—are Massachusetts residents. This surprising fact means not only that 98 percent of the plaintiff-specific discovery must take place outside Massachusetts, but also that some of the most important witnesses—the surgeons who performed the hernia mesh surgeries and chose to use Covidien products rather than the dozens of other

---

[5] The pending cases are listed in the attached Schedule of Actions ("the Related Actions").

[6] Covidien is relying on the word of Plaintiffs' counsel for this number, because the court can only docket so many new cases a day. As of year-end 2021, Covidien was aware of approximately 3,170 docketed complaints, with approximately 3,200 plaintiffs.

available hernia mesh products—cannot be compelled to testify at trials conducted in Massachusetts. Accordingly, the Covidien Defendants moved on January 19, 2022, to dismiss the cases of the non-Massachusetts plaintiffs on *forum non conveniens* grounds. If the Massachusetts court grants that motion, hundreds more cases will be re-filed in federal court (or, if re-filed in state court, will be subject to removal based on diversity of citizenship). These cases would be only a few strides out of the starting blocks: written discovery is still being exchanged in the coordinated Massachusetts proceeding, and no depositions have been taken.

There is also now the prospect of a second coordinated state proceeding. Plaintiffs' counsel who are not involved in the federal or Massachusetts cases have recently filed 25 individual complaints and three multi-plaintiff complaints (232 plaintiffs in all) in Minnesota state court. The same plaintiffs' counsel have indicated that they will file more cases there. That litigation is likewise at the earliest stage, with responsive pleadings not yet having been filed.

Accordingly, the reasons that led the Panel to create MDLs for the hernia mesh products of Atrium, Ethicon, and Bard are now present here: (1) there are common factual questions arising out of allegations that defects in the Covidien products led to complications following hernia repair surgery, and (2) centralization will eliminate duplicative discovery and prevent inconsistent pretrial rulings (3) while conserving the resources of the parties, their counsel, and the judiciary. Creation of an MDL would also facilitate coordination with the coordinated proceeding in Massachusetts and the similar proceeding that is likely to be established in Minnesota. And, importantly, there are now five times the number of pending federal cases as there were in June 2020, when the Covidien Defendants first petitioned the Panel—and five times the number of cases when the Panel created MDLs for the Atrium, Ethicon, and Bard litigations. The Covidien Defendants therefore respectfully suggest that the Panel transfer the

Related Actions (and tag-along cases) to the District of Massachusetts, where all of the Related Actions have been assigned to Judge Leo T. Sorokin.

FACTUAL BACKGROUND

A. Hernia Mesh Products

A hernia is a common medical condition that affects more than four million people in the United States each year. Risk factors for hernias include obesity, diabetes, smoking, pregnancy, prior surgeries, and family history. Surgery is the only treatment available to repair a hernia, but like all surgical procedures, hernia repair has inherent risks, regardless of whether a mesh product is used. According to the U.S. Food & Drug Administration ("FDA"), these risks include "pain, infection, hernia recurrence, scar-like tissue that sticks tissues together (adhesion), blockage of the large or small intestine (obstruction), bleeding, abnormal connection between organs, vessels, or intestines (fistula), fluid build-up at the surgical site (seroma), and a hole in neighboring tissues or organs (perforation)."[7] It is well-known that a significant percentage of all hernias will recur within a few years of surgery—a risk that is lower when mesh is used and higher in patients who are obese or have large hernias.

Hernia mesh products were introduced in the United States in the mid-1940s and quickly revolutionized the field of hernia surgery. Since then, a large body of scientific evidence has established that the use of hernia mesh strengthens surgical repair, reduces the rate of hernia recurrence, and decreases the need for reoperation. Clinical studies also suggest that surgical mesh improves patient outcomes and reduces recovery times. For these reasons, the vast majority of surgeons now use mesh to repair all but the smallest hernias.

---

[7] *See* FDA, *Hernia Surgical Mesh Implants*, https://www.fda.gov/medical-devices/implants-and-prosthetics/hernia-surgical-mesh-implants (last updated Feb. 4, 2018).

A number of different manufacturers provide a wide range of surgical meshes. Covidien, for example, manufactures and sells more than 20 hernia mesh products that differ in materials, size, density, and other characteristics, allowing surgeons to choose the mesh appropriate for the individual patient and the specific procedure. Surgeons use mesh products safely in hundreds of thousands of hernia repair procedures each year.

B. Origins of the Hernia Mesh Litigation

A few hernia mesh products manufactured by other companies have been subject to recalls, withdrawals, or performance issues for product design or packaging defects. Those problems led to litigation and the Panel's creation of two MDLs, *In re Atrium Medical Corp. C-QUR Mesh Products Liability Litigation*, 223 F. Supp. 3d 1355 (J.P.M.L. 2016) (MDL-2753 (D.N.H.)), and *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Products Liability Litigation*, 254 F. Supp. 3d 1381 (J.P.M.L. 2018) (MDL-2782 (N.D. Ga.)).

But Plaintiffs' counsel did not stop with those hernia mesh products that had been recalled or withdrawn; they launched litigation on an industry-wide basis, advertising nationwide and asserting in radio, television, and internet advertisements that ***all*** hernia mesh products are defective.[8] The next targets were 21 different hernia mesh products manufactured by Davol and Bard, none of which had been recalled or withdrawn from the market. This Panel then created a third hernia mesh MDL, *In re Davol, Inc./C.R. Bard, Inc. Polypropylene Hernia Mesh Prods. Liab. Litig.*, 316 F. Supp. 3d 1380 (J.P.M.L. 2018). Although each litigation had fewer than 20

[8] *See, e.g.*, Shouse Law Group, *Hernia Mesh Lawsuit–A Lawyer's Guide to the Process*, https://www.shouselaw.com/herniamesh.html (identifying the "manufacturers of defective hernia mesh implants sued for injuries" as Atrium Medical Corporation, Covidien, C.R. Bard, Ethicon, Gore Medical, and Genzyme Corporation).

cases when the Panel created MDLs, the Atrium, Ethicon, and Bard MDLs each now involve more than two thousand cases.

C. The Covidien Hernia Mesh Litigation

Plaintiffs' counsel's advertising also targeted more than 20 different Covidien hernia mesh products.[9] The early lawsuits involving Covidien hernia mesh products were filed in federal court and met with little success. When the Covidien Defendants first petitioned the Panel to centralize the cases, fourteen different judges in eleven districts had granted motions to dismiss complaints (with or without prejudice) pursuant to Federal Rule of Civil Procedure 12(b)(6) or found the claims were time-barred or both. Two courts had granted Covidien summary judgment. Twelve cases remained pending in 2020.

In the meantime, Plaintiffs had also filed a number of cases in Massachusetts state court. In March 2020, with 96 cases on file, the parties jointly moved for special assignment of the cases to one judge. In May 2020, the cases were assigned to Associate Justice Hélène Kazanjian, and were recently reassigned to Associate Justice Christopher Barry-Smith. According to Plaintiffs' counsel, there now are approximately 4,700 cases in that coordinated action. Of the more than 3,000 complaints (on behalf of 3,266 plaintiffs) of which Covidien is currently aware, ***only 55 plaintiffs***—a mere ***1.7 percent***—are Massachusetts residents—a fact that renders trial of the other 3,211 plaintiffs in a Massachusetts court burdensome and highly inconvenient. Accordingly, Defendants have moved to dismiss the cases of the non-Massachusetts residents on

---

[9] *See e.g.*, Andrus Wagstaff, *Hernia Mesh*, https://www.andruswagstaff.com/hernia-mesh/; Hollis Law, *Parietex Lawsuit: Who is the FDA Protecting?*, https://hollislawfirm.com/case/hernia-mesh-lawsuit/parietex/; Surgical Mesh Help: Blasingame Burch Garrard Ashley, P.C., *Hernia Mesh Products*, http://www.surgicalmeshhelp.com/hernia-mesh-products/; Weitz & Luxenberg, *Covidien Hernia Mesh Complications*, https://www.weitzlux.com/defective-drugs-and-devices/covidien-hernia-mesh-complications/.

forum non conveniens grounds. That motion is pending. If granted, some 3,200 plaintiffs—at least—would find it necessary to re-file their cases. If they re-file in federal court, then that will add to the number of cases that will benefit from MDL centralization. And, if they re-file in state court in states other than Minnesota or Massachusetts,[10] those cases will be subject to removal to federal court based on diversity of citizenship, and will further add to the number of cases that will benefit from MDL centralization. On the other hand, if the *forum non conveniens* motion is denied, there is even greater reason to centralize the federal cases in order to facilitate coordination of pretrial discovery with the Massachusetts and Minnesota proceedings.

In the last three months, 67 cases have been filed in the District Court for the District of Massachusetts, all of which have been assigned to Judge Leo T. Sorokin.

ARGUMENT

I. COORDINATION OF THE RELATED ACTIONS IS APPROPRIATE.

Civil actions that involve "one or more common questions of fact" and that "are pending in different districts, … may be transferred to any district for coordinated … pretrial proceedings." 28 U.S.C. § 1407. Transfer is appropriate where the Panel determines that a coordinated proceeding "will serve the convenience of parties and witnesses and will promote the just and efficient conduct of the litigation" *id.*, as it will when centralization "will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary." *In re Zofran (Ondansetron) Prods. Liab. Litig.*, 138 F. Supp. 3d 1381, 1382 (J.P.M.L. 2015).

[10] Some of the Medtronic and Tyco entities, *see supra* n.1, are incorporated or headquartered in Massachusetts and Minnesota. Certain entities are incorporated in Delaware. Sofradim is a French company. As noted above, Defendants do not concede that all of these entities are proper parties, and many of them are not.

The Panel recognized in 2020 that the cases concerning Covidien's hernia mesh products meet those criteria—that the "actions share allegations that defects in [D]efendants' hernia mesh products can lead to complications" and that "[c]entralization thus likely would avoid a certain amount of duplicative discovery, eliminate the possibility of conflicting rulings on the scope of discovery and other pretrial matters, and create some efficiencies for the parties and the judiciary." 2020 Order at 2. The Panel declined to order centralization, however, because (i) just twelve federal cases were then pending, and (ii) the Panel was not persuaded that the benefits of centralization outweighed the disruption to the pending actions, some of which had been pending for two years or more.

Circumstances have changed in the intervening 18 months, and these recent developments have largely rendered moot the Panel's reservations. Like the similar hernia mesh litigations involving the Atrium, Ethicon, and Bard defendants, MDL centralization is now appropriate.

A. The Related Actions Involve Common Questions of Fact.

Plaintiffs' complaints concerning Covidien hernia mesh products present the same common questions of fact as did the complaints concerning the Atrium, Ethicon, and Bard products—questions arising out of allegations that the products are defective in their design, manufacture, and warnings and lead to complications when implanted in patients. The Panel so recognized in 2020. 2020 Order at 2.

B. Centralization Will Eliminate Duplicative Discovery and Prevent Inconsistent Pretrial Rulings.

The Panel recognized in the other hernia mesh litigations that centralization would eliminate unnecessarily duplicative discovery, and, in 2020, it recognized that the same would likely be true for centralization of the Covidien hernia mesh cases. 2020 Order at 2

("Centralization … likely would avoid a certain amount of duplicative discovery …."). At that time, however, there were only twelve pending cases, and the Panel observed that "informal cooperation and coordination" could minimize duplicative pretrial proceedings. *Id*. at 2–3.

Now, 73 federal cases are pending, and, of that number, 58 have been filed in the last three months (29 in December, 29 more in January, and 9 more in February). Additional cases are certain to be filed in short order because tolling agreements for more than 6,000 claimants have recently expired.[11] The 67 newly-filed cases are pending in the District of Massachusetts. Six other cases are pending in six districts (the Middle District of Florida, Southern District of Florida, Eastern District of Louisiana, Western District of Missouri, District of New Jersey, and Northern District of Oklahoma); since 2020, federal cases have been resolved in nine other districts (the Southern District of New York, Northern District of New York, Eastern District of Michigan, District of New Mexico, Northern District of California, Central District of California, Middle District of Pennsylvania, Southern District of Iowa, and Western District of Texas).[12] All of the pending cases are in their infancy; only three of the cases have proceeded past the motion-to-dismiss stage, one of which had the motion to dismiss denied only last week.

Thus, MDL centralization would facilitate the coordination of discovery and the elimination of duplicative discovery and inconsistent pretrial rulings for (i) the 67 cases pending federal cases in Massachusetts, (ii) the six pending cases in which discovery has not gotten

---

[11] Of that number, only 63 are Massachusetts residents.

[12] Of the twelve federal cases that were pending in 2020, when Defendants first petitioned the Panel, nine have been dismissed, one has been dismissed and re-filed in the Massachusetts coordinated proceeding, and two remain active. Thus, the concern expressed by the Panel in 2020—that centralization might disrupt pending actions that were well underway—does not exist today. In both surviving cases, *Singletary v. Covidien LP*, No. 2:19-cv-13108 (E.D. La.), and *Smith v. Covidien LP*, No. 1:19-cv-11981 (D.N.J.), discovery has been completed and motions for summary judgment are pending.

underway, (iii) the expected additional federal cases that will be filed around the country as tolling agreements continue to expire, and (iv) the expected additional federal cases not subject to tolling agreements, but which will be filed by law firms who continue to advertise to hernia patients.[13] MDL centralization will also facilitate coordination with the Massachusetts coordinated proceeding, whether it is a proceeding with 4,700-plus cases (as now) or less than 100 (if the *forum non conveniens* motion is granted), and with a likely Minnesota coordinated proceeding. Facilitating such coordination strongly favors centralization, as the Panel has repeatedly recognized. *In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 220 F. Supp. 3d 1356, 1358 (J.P.M.L. 2016) ("[C]oordination with the state court actions will be enhanced if only one federal judge needs to communicate with the multiple state court judges overseeing" the litigation); *In re: Lipitor (Atorvastatin Calcium) Mktg., Salespractices & Prod. Liab. Litig. (No. II)*, 997 F. Supp. 2d 1354, 1356 (J.P.M.L. 2014) (same); *In re Plavix Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, 923 F. Supp. 2d 1376, 1378–79 (J.P.M.L. 2013) (same).

Informal coordination is no substitute. Associate Justice Barry-Smith can reasonably be expected to coordinate the state court proceeding over which he presides with *one* MDL judge, but not with seven or more federal courts. For that matter, coordination among seven federal judges in seven districts (even assuming there are no new cases filed in additional districts) is unrealistic and, as far as Defendants know, without precedent.

---

[13] The Panel will no doubt be disinclined to speculate whether or not the Massachusetts court will grant the pending *forum non conveniens* motion. If the court grants the motion, however, then more than 4,600 plaintiffs—plaintiffs who reside, and had their hernia mesh surgery performed, in 49 different states—will re-file their cases, presumably in a number of District Courts (as well as state courts from which the cases can be removed to federal court).

C. Centralization Will Conserve Resources.

As the Panel determined in ordering centralization of the other hernia mesh litigations, centralization will conserve the resources of the parties, their counsel, and the judiciary. This factor has added importance in the circumstances of the Covid-19 pandemic. It is not only more efficient, but ***safer***, for there to be one set of status hearings in one location for these cases, with travel limited to that one courthouse, not dozens around the country. The Panel in 2020 recognized that, as with the other hernia mesh litigations, centralization of the Covidien hernia mesh cases would "create some efficiencies for the parties and the judiciary." 2020 Order at 2.

Two years ago, the Panel's reservation was that some actions had been pending for two or three years and, thus, centralization might disrupt those actions. *Id*. But, of the twelve cases pending in 2020, only two remain.[14] In the 73 pending federal cases (67 in Massachusetts and 6 in 6 other districts), discovery has yet to begin in 71 cases.

* * *

In 2020, there were only 12 pending federal cases. Knowing that there were tolling agreements with more than 6,000 potential plaintiffs, the Covidien Defendants could see the storm coming, but given the terms of the agreements, could not explain to the Panel why we were confident in our forecast that the "number [of cases] is certain to balloon."[15] There are now five times as many federal cases as there were in 2020—and far more than were pending when the Panel created MDLs for the Atrium, Ethicon, and Bard hernia mesh litigations.[16] More

---

[14] *See* n. 12, *supra*.

[15] 2020 Mem. at 2.

[16] When the Panel was petitioned to create MDLs for those litigations, there were thirteen actions pending against Atrium in seven districts; eighteen actions against Ethicon in ten districts; and fifteen actions against Bard in seven districts.

federal cases are on the way. This litigation, too, now satisfies the requirements of 28 U.S.C. § 1407: centralization will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of the cases.

II. THE DISTRICT OF MASSACHUSETTS IS THE MOST APPROPRIATE JURISDICTION FOR TRANSFER OF THE RELATED ACTIONS.

In 2020, Defendants believed that the Southern District of New York would be the most suitable forum, primarily because it had the most meaningful nexus to the pending cases and the parties at that time. Four of the twelve pending cases were located there, including one case that had proceeded beyond the pleading stage, and no other district had more than one action. In 2020, a majority of the plaintiffs opposed centralization, but favored transfer to the District of Massachusetts if the Panel created an MDL. Now, the pending cases are concentrated in the District of Massachusetts, and the other considerations that in 2020 weighed in favor of the Southern District of New York equally favor the District of Massachusetts. This concentration of cases alone supports transfer to the District of Massachusetts.[17] The other factors that make that court a suitable venue are:

First, Judge Barry-Smith presides over a coordinated state court proceeding in Middlesex County, Massachusetts. Whether that proceeding involves 3,000-plus cases (as now) or a lesser number (if the *forum non conveniens* motion is granted), there is (i) convenience to counsel if the centralized federal and state proceedings are in the same state, (ii) added safety in this time of pandemic if the amount of travel is reduced, and (iii) some measure of efficiency for the two

[17] *See In re N. Sea Brent Crude Oil Futures Litig.*, 978 F. Supp. 2d 1384, 1385 (J.P.M.L. 2013) (centralizing actions in the Southern District of New York where "five of the six constituent actions already are pending"); *In re Fosamax Prods. Liab. Litig.*, 444 F. Supp. 2d 1347, 1349 (J.P.M.L. 2006) (centralizing actions in the Southern District of New York where "[m]ost of the actions are already pending").

judges, if they find it useful to conduct joint hearings. *See, e.g.*, *In re Ford Motor Co. DPS6 PowerShift Transmission Prod. Liab. Litig.*, 289 F. Supp. 3d 1350, 1353 (J.P.M.L. 2018) (centralizing federal MDL in Central District of California because "[t]he vast majority of the actions are pending in California," and because it would "facilitate coordination with California state court litigation involving the same alleged defect").[18]

Second, coordination with the Massachusetts proceeding should weigh more heavily here than it might in other litigations because there is no U.S. forum that has an obvious nexus to Plaintiffs' claims or that is particularly convenient to the parties, counsel or the witnesses. Plaintiffs are scattered across the country, with no particular cluster in any one district or state. As for the Covidien defendants, nearly all of the Covidien hernia mesh products were developed and manufactured at Sofradim in Trevoux, France,[19] and most of the relevant witnesses and documents are located there. Covidien LP has its headquarters in Massachusetts and a company within the same corporate family sometimes named as a co-defendant, Medtronic, Inc., has its headquarters in Minneapolis. To the extent that witnesses in France may have reason to travel to the United States, then an East Coast forum (like Boston) is a convenient location because it is served by a major international airport. The same is true for counsel located in any midsize or large city: they can reach Boston with one flight.

Finally, the Panel frequently has recognized that the District of Massachusetts is a convenient forum for MDLs. *See, e.g.*, *In re Evenflo Co., Inc.*, No. 1:20-md-2938; *In re Ranbaxy Generic Drug Application Antitrust Litig.*, No. 1:19-md-2878; *In re Stryker LFIT V40 Femoral*

---

[18] Indeed, Judge Sorokin has already expressed interest in coordinating the federal cases in his court with the Massachusetts state-court litigation, as appropriate. Jan. 6, 2022 Hr'g Tr. 13.

[19] The exception is a low-volume product (SurgiPro) that is not the subject of any of the eight pending federal lawsuits. SurgiPro was developed and is manufactured in Connecticut.

Head Prods. Liab. Litig., 1:17-md-2768; *In re Daily Fantasy Sports Litig.*, No. 1:16-md-2677; *In re Telexfree Sec. Litig.*, No. 4:14-md-2566; *In re Fresenius Granuflo/Naturalyte Dialysate Prods. Liab. Litig.*, No. 1:13-md-2428. Judge Sorokin, who presides over the 58 cases now pending in that District, was the Magistrate Judge for the *In re Neutrontin* MDL (MDL-1479), and has queried whether an MDL might be created here. *See* Jan. 6, 2022 Hr'g Tr. 5 ("Is there any sort of MDL that's out there that these might go to or definitely go to, or is there some MDL that would be created?"), 7 ("[T]here is no existing MDL for this ... or maybe an MDL is created, question to be addressed down the road."), 13 (agreeing to wait to see "what happens with an MDL or not").

CONCLUSION

As in *In re Proton-Pump Inhibitor Prod. Liab. Litig. (No. II)*, 261 F. Supp. 3d 1351, 1354 (J.P.M.L 2017), circumstances have changed since the Covidien Defendants first petitioned for MDL centralization. As in that case, that "the significantly larger number of involved actions, districts, and counsel, the concomitant increase in burden on party and judicial resources, and the opportunity for federal-state coordination, … tip the balance in favor of creating an MDL." Accordingly, Defendants request that the Panel transfer the Related Actions for coordinated pretrial proceedings to the United States District Court for the District of Massachusetts.

Dated: February 18, 2022

Respectfully submitted,

DLA PIPER LLP (US)

By: */s/ Loren H. Brown*
Loren H. Brown
Lucas P. Przymusinski
1251 Avenue of the Americas
45th Floor
New York, NY 10020
Telephone: (212) 335-4500
Fax: (212) 335-4501
loren.brown@dlapiper.com

lucas.przymusinski@dlapiper.com

Jessica C. Wilson
Katie Insogna
33 Arch Street, 26th Floor
Boston, MA 02110
Telephone: (617) 406-6009
Fax: (617) 406-6109
jessica.wilson@dlapiper.com
katie.insogna@dlapiper.com

WILLIAMS & CONNOLLY LLP

Joseph G. Petrosinelli
Ana Reyes
Daniel P. Shanahan
Michael J. Mestitz
725 12th Street, NW
Washington, DC 20005
Telephone: (202) 434-5000
Fax: (202) 434-5029
jpetrosinelli@wc.com
areyes@wc.com
dshanaham@wc.com
mmestitz@wc.com

Counsel for Covidien LP, Covidien Holding Inc., Covidien, Inc., Covidien plc, Tyco Healthcare Group, Tyco International, Sofradim Productions SAS, Medtronic, Inc., and Medtronic USA, Inc.