

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

In re:

MDL No. 1:24md3111 (DJN)

CAPITAL ONE 360 SAVINGS ACCOUNT
INTEREST RATE LITIGATION

This document relates to
ALL CASES

PRETRIAL ORDER NO. 4
(Directing Parties to File Position on *Lexecon* Waiver)

This matter comes before the Court on its own initiative. The Court's Pretrial Order No. 2 scheduled an initial pretrial conference and informed the parties to be prepared to discuss any objections to trial of all member cases in this District pursuant to a "*Lexecon* waiver." (ECF No. 7.) As the Fifth Circuit explained:

An MDL court can conduct pretrial proceedings but cannot try a case that it would not be able to try without its MDL status. Federal law limits an MDL court's jurisdiction over a transferred case to pretrial proceedings and provides that once those are completed, the MDL court must remand the transferred case to the district from which it was transferred. . . . An MDL court can try a case where venue is improper if the parties waive their objections. Such waivers are known as "*Lexecon* waivers."


In re Depuy Orthopaedics, Inc., 870 F.3d 345, 348 (5th Cir. 2017).

To facilitate discussion at the initial pretrial conference, the Court hereby DIRECTS the parties to file their position on whether they consent to a consolidated trial of all cases in the Eastern District of Virginia, assuming the MDL proceedings survive summary judgment, and thereby waive their right for each Member Case to be remanded to the transferor court for trial pursuant to 28 U.S.C. § 1407(a). *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 36–37 (1998); see *In re Biomet M2A Magnum Hip Implant Prod. Liab. Litig.*, 357 F.

Supp. 3d 1389, 1390 (J.P.M.L. 2018) (noting that “parties often waive *Lexecon* rights for a given case to remain in the transferee court for trial”). The parties’ positions shall be no longer than three (3) pages and shall be filed no later than July 12, 2024. The Court advises the parties that they are free to withhold consent without adverse substantive consequences.

The Clerk is DIRECTED to provide a copy of this Order to all counsel of record and file this Order on the MDL docket and the MDL Website.

It is so ORDERED.


_____/s/_____
David J. Novak
United States District Judge

Alexandria, Virginia
Date: July 2, 2024