

[Products Liability Law Daily Wrap Up, JURISDICTION—MEDICAL PRODUCTS—N.D. Cal.: Request for consolidation of pre-trial proceedings not a basis for federal jurisdiction, \(Sept. 26, 2016\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

A motion for consolidation for pre-trial proceedings brought by plaintiffs in 14 cases involving allegedly defective inferior vena cava (IVC) filters manufactured by Cordis Corp. did not give a federal district court in California jurisdiction under the Class Action Fairness Act (CAFA) of 2005, the court ruled in remanding the cases to state court. However, the court declined to award attorneys' fees because Cordis had an objectively reasonable basis for removal (*Dunson v. Cordis Corp.*, September 23, 2016, Chen, E.).

The plaintiffs were more than 150 individuals who alleged that they or their decedents were injured by defective Cordis IVC filters. These plaintiffs filed 14 separate actions in California state court, and then filed a motion in one of these cases to consolidate the actions for all purposes of pre-trial proceedings and discovery and to form a bellwether trial process. The motion stated that the plaintiffs were not seeking consolidation for a single trial to determine the outcome for all plaintiffs. Cordis removed the cases to federal court on the basis that jurisdiction was proper under CAFA's mass action provision because the motion proposed a joint trial. After the cases were assigned to one judge, the court held a hearing on the jurisdictional issue.

CAFA mass action provision. There was no federal jurisdiction because the request for consolidation of pre-trial proceedings did not constitute a request for a joint trial. The motion explicitly disclaimed any effort to seek a joint trial and specifically stated that it was seeking a single judge only to coordinate common discovery and pre-trial proceedings. Even though Cordis argued that the plaintiffs had requested a joint trial by requesting the institution of a bellwether trial process, the results of a bellwether trial are not binding on other litigants in the group because it normally serves only an informational purpose by allowing the parties to determine the likely value of the claims. A bellwether trial is not a joint trial under CAFA, without "more" such as coordination of trial proceedings. Cordis argued that the consolidated pre-trial proceedings might involve receiving evidence that could bind all parties regarding certain issues, but such a broad definition of "trial" would render a nullity CAFA's distinction between pre-trial and trial proceedings.

The cases are Nos. [C-16-3076](#), [C-16-3080](#), [C-16-3082](#), [C-16-3083](#), [C-16-3085](#), [C-16-3086](#), [C-16-3087](#), [C-16-3088](#), [C-16-4012](#), [C-16-4409](#), [C-16-4608](#), [C-16-4819](#), [C-16-5055](#), and [C-16-5199](#).

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Companies: Cordis Corp.; Confluent Medical Technologies, Inc.

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