

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2197

**TRANSFER ORDER**

**Before the Panel:** Pursuant to Panel Rule 7.1, plaintiffs in the action listed on Schedule A move to vacate our order that conditionally transferred their action to MDL No. 2197. Responding defendants<sup>1</sup> oppose the motion to vacate.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2197, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged injuries from DePuy's recalled ASR XL Acetabular Hip System. *See In re: DePuy Orthopaedics, Inc., ASR Hip Implant Prods. Liab. Litig.*, 753 F.Supp.2d 1378 (J.P.M.L. 2010). This action involves injuries from implantation of DePuy ASR hip implant, and clearly falls within the MDL's ambit.

Plaintiffs do not dispute that their action shares questions of fact with actions pending in MDL No. 2197. Plaintiffs instead base their arguments against transfer primarily on the inconvenience of traveling from the Southern District of Ohio to the transferee court in the Northern District of Ohio. While we are sympathetic to these concerns, they are insufficient to justify denial of transfer. When deciding issues of transfer under Section 1407, we must look to the overall convenience of the parties and witnesses, not just those of the parties to a single action. *See, e.g., In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012). Furthermore, because Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. *See In re: MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003).

Plaintiffs additionally argue that their action should be excluded from the centralized proceedings because they cannot participate in a putative settlement agreement reached among certain classes of MDL plaintiffs. We disagree that this circumstance weighs against inclusion of *Dunn* in MDL No. 2197. Transfer is still appropriate given the undisputed common factual issues, as well as significant discovery and motion practice that may occur in actions involving similarly-situated plaintiffs and those plaintiffs who choose not to participate in the proposed settlement program.

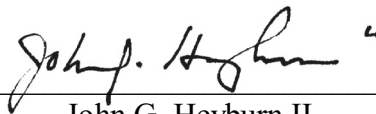
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<sup>1</sup> DePuy Orthopaedics, Inc., and Johnson & Johnson.

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IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable David A. Katz for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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John G. Heyburn II  
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Ellen Segal Huvelle

Charles R. Breyer  
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R. David Proctor

**IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2197

**SCHEDULE A**

Southern District of Ohio

DUNN, ET AL. V. JOHNSON & JOHNSON, ET AL., C.A. No. 1:14-60