

**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 seven actions listed on Schedule A move to vacate our orders that conditionally transferred their respective actions to MDL No. 2197. Responding defendants¹ appearing in one or more actions oppose the motions to vacate.

After considering all argument of counsel, we find these actions involve 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). These actions all involve injuries from implantation of DePuy ASR hip implants, and clearly fall within the MDL's ambit.

None of the plaintiffs dispute that their actions share questions of fact with actions pending in MDL No. 2197. Plaintiffs instead base their arguments against transfer primarily on the pendency of motions to remand their respective actions to state court. Plaintiffs in these actions can present their motions for remand to the transferee judge.² *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

¹ DePuy Orthopaedics, Inc., DePuy International Ltd., and DePuy, Inc. (collectively DePuy); Johnson & Johnson International, Johnson & Johnson Management Ltd., Johnson & Johnson Medical Ltd., Johnson & Johnson Services, Inc., and Johnson & Johnson; A1A, Inc.; Bayside Orthopaedics, Inc.; Chesapeake Surgical, Ltd.; Kelly Orthopaedic Sales, Inc.; William G Macari and Macari Medical, Inc.; Pacific Orthopaedics Inc.; Jacob Rule and Patrick Williams.

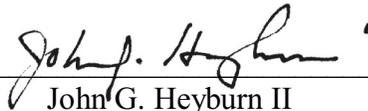
² Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon the remand motion generally has adequate time in which to do so.

-2-

Plaintiffs in the Northern District of Illinois *Jacobs* action oppose centralization, in part, because the action contains claims involving a DePuy hip implant (referred to as an “Ultamet” hip implant in their complaint) that is unrelated to the ASR hip implants involved in MDL No. 2197. Defendants assert that plaintiff’s Ultamet hip is used in connection with DePuy Pinnacle hip implants, which are the subject of MDL No. 2244 – *In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*, pending in the Northern District of Texas. Given the pending remand motion in this action, we find it advisable to transfer *Jacobs* in its entirety to MDL No. 2197 to allow a single federal court to settle the issue of federal jurisdiction. If appropriate, the transferee court can suggest Section 1407 remand of any unrelated claims to the transferor court, which the Panel may then transfer, via conditional transfer order, for inclusion in MDL No 2244.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are 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



John G. Heyburn II
Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Charles R. Breyer

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan

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

MDL No. 2197

SCHEDULE A

Middle District of Florida

Renee Stratos v. Bayside Orthopaedics, Inc., et al., C.A. No. 8:12-02137
Lawrence Hammers v. Bayside Orthopaedics, Inc., et al., C.A. No. 8:12-02553

Northern District of Illinois

Linda D. Jacobs, et al. v. DePuy Orthopaedics, Inc., et al., C.A. No. 1:12-07764

District of Maryland

Susan T. Israel v. Johnson & Johnson, Inc., et al., C.A. No. 1:12-02953

District of Oregon

Jimmy King v. Jacob Rule, et al., C.A. No. 3:12-01731

District of South Carolina

Teresa S. Murphy-Pittman v. DePuy Orthopaedics, Inc., et al., C.A. No. 3:12-03179

Northern District of Texas

Sue Dunn v. DePuy Orthopaedics, Inc., et al., C.A. No. 4:12-00724