

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2244

TRANSFER ORDER

Before the Panel:* Plaintiffs in the District of Massachusetts action (*Nutile*) listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel's order conditionally transferring their action to MDL No. 2244. Defendant DePuy Orthopaedics, Inc. opposes the motion.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2244, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Texas was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged injuries from DePuy's Pinnacle Acetabular Cup System hip implants. *See In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prods. Liab. Litig.*, 787 F.Supp. 2d 1358 (J.P.M.L. 2011). *Nutile* involves injuries related to DePuy Pinnacle Acetabular Cup System hip implants and falls within the MDL's ambit.

Plaintiffs oppose transfer by arguing that plaintiff husband's injuries arise from fracture of the femoral stem, a DePuy S-Rom stem, and are consequently unique and distinct from the MDL proceedings. But we have transferred other cases involving femoral stem fractures over similar objections of plaintiffs. *See* Transfer Order in *Mondello v. DePuy Orthopaedics, et al.*, N.D. California , C.A. No. 14-2086, JPML CM/ECF, MDL No. 2244, doc. 1356 (Aug. 12, 2014) ("*Mondello* contains factual allegations concerning an injury – femoral stem fracture – that is similar to those raised by other MDL No. 2244 plaintiffs."). Plaintiffs also make allegations about the Pinnacle hip that are broader in scope than the professed limitation of their case to injuries resulting from a femoral stem fracture. For instance, plaintiffs allege that "defendant knew or reasonably should have known that its S-Rom femoral hip system with metal-on-metal head *and the Pinnacle acetabular component replacement system* was unreasonably dangerous when used as directed and as designed." Complaint at ¶ 14 (emphasis added). Thus, discovery in *Nutile* likely will overlap with the general MDL discovery regarding such matters as the design, development, testing, approval, manufacture and sale of the Pinnacle hip system, and transfer offers significant litigation efficiencies.

We are persuaded that this action will benefit from the framework provided by the centralized proceedings for discovery and motion practice. As the litigation progresses, however, if the transferee

* Judge Charles R. Breyer did not participate in the decision of this matter.

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judge determines that claims involving, for instance, femoral stem fractures will no longer benefit from inclusion in MDL No. 2244, then we encourage him to promptly suggest that the Panel remand such actions or claims to the transferor court. *See* Panel Rule 10.1(b); *In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1347 (J.P.M.L. 2007).

IT IS THEREFORE ORDERED that this action is transferred to the Northern District of Texas and, with the consent of that court, assigned to the Honorable James E. Kinkeade for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

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SCHEDULE A

District of Massachusetts

NUTILE, ET AL. v. DEPUY ORTHOPAEDICS, INC., C.A. No. 1:15-12996