

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: Plaintiff in the District of Massachusetts action (*DuPont*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring *DuPont* to MDL No. 2244. Defendants DePuy Orthopaedics, Inc., and Johnson & Johnson Services, Inc., oppose the motion.

After considering the argument of counsel, we find 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). This action involves injuries related to DePuy Pinnacle Acetabular Cup System hip implants and falls within the MDL's ambit.

Plaintiff does not dispute that her action shares questions of fact concerning Pinnacle hip implants with actions pending in MDL No. 2244. Plaintiff instead bases her arguments against transfer primarily on the pendency of her motion to remand the action to state court and her preference for having the District of Massachusetts rule on the motion to remand. These arguments are unconvincing. Plaintiff can present her renewed motion for remand to the transferee judge.¹ *See, e.g., In re: Ivy*, 901 F.2d 7, 9 (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 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 generally has adequate time to rule on a remand motion if it chooses to do so. Here, the transferor judge denied plaintiff's motion to remand without prejudice to renewal after our decision on plaintiff's motion to vacate the conditional transfer order.

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
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

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SCHEDULE A

District of Massachusetts

DUPONT v. DEPUY ORTHOPAEDICS, INC., ET AL., C.A. No. 1:15-10702