

**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 Central District of California action listed on the attached Schedule A (*Pothoulakis*) moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring her action to MDL No. 2244. DePuy defendants¹ oppose 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. Transfer also 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). *Pothoulakis* involves injuries related to plaintiff's DePuy Pinnacle Acetabular Cup System hip implant and thus falls within the MDL's ambit.

Plaintiff argues against transfer, in part, based on her assertion that federal jurisdiction is lacking over *Pothoulakis*. Plaintiff can present her motion for remand to the transferee judge.² *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).

Plaintiff also argues that her action is unique because she received a Pinnacle acetabular cup and other DePuy components that were paired with a femoral stem and related components from a

* Judge Marjorie O. Rendell did not participate in the decision of this matter.

¹ DePuy Orthopaedics, Inc., DePuy Synthes, Inc. (f/k/a DePuy, Inc.), Johnson & Johnson Services Inc., and Johnson & Johnson.

² Under Panel Rule 2.1(d), 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.

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completely different manufacturer, Consensus. While *Pothoulakis* does appear unique in that respect – defendants point to no other such combination case – plaintiff makes allegations similar to those that are at the core of the MDL proceedings regarding the Pinnacle hip system.³ Transfer thus is appropriate. Further, contrary to plaintiff’s arguments, plaintiff may retain her current lawyer in the transferee court.⁴ Finally, if the need arises, plaintiff can request that the transferee judge allow her to take any additional discovery or expedite the prosecution of her action.

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

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

³ See, e.g., Second Amend. Compl. ¶ 35 (alleging that “[b]ecause of Defendants’ defective design for the Pinnacle Hip, hundreds of patients—including Pothoulakis—have been forced to undergo surgeries to replace the failed hip implants.”); *id.* ¶ 36 (Pinnacle Hip suffers from “design or manufacturing defects that cause excessive amounts of cobalt and chromium to wear from the surface of the acetabular insert or from the femoral head” which “prompt[s] the body to react by rejecting the hip implant” that “often manifests with symptoms of pain, looseness, dislocation, and squeaking and popping sounds”).

⁴ See Panel Rule 2.1 (c) (“Any attorney of record in any action transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties are not required to obtain local counsel.”).

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SCHEDULE A

Central District of California

POTHOULAKIS, ET AL. v. DEPUY ORTHOPAEDICS, INC., ET AL.,
C.A. No. 2:17-02889