

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2244

ORDER DENYING TRANSFER

Before the Panel: Relators in a District of Massachusetts *qui tam* action listed on the attached Schedule A move, pursuant to 28 U.S.C. § 1407(c), to transfer the action (*United States ex rel. Nargol*) to the Northern District of Texas for inclusion in MDL No. 2244. DePuy defendants¹ oppose the motion.

After considering the argument of counsel, we deny Relators' motion to transfer. We ordered centralization in this docket in May 2011. *See In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prods. Liab. Litig.*, 787 F. Supp. 2d 1358 (J.P.M.L. 2011). The MDL actions are largely personal injury actions sharing factual questions concerning alleged injuries from DePuy's Pinnacle Acetabular Cup System hip implants. Without doubt, *United States ex rel. Nargol* shares many facts with the cases in the MDL. The *qui tam* action is focused on allegations that, by selling the Pinnacle hip implant components with certain latent manufacturing defects, defendants indirectly caused physicians to submit claims to the United States and New York for payment for Pinnacle metal-on-metal devices that did not materially comport with the specifications of the FDA approval for those devices, in violation of the False Claims Act. In fact, relators are two surgeons who also served as fact and expert witnesses in the MDL bellwether process.

Despite the factual overlap between *United States ex rel. Nargol* and the MDL cases, transfer is not necessary to ensure the just and efficient conduct of the MDL or this *qui tam* action. Several considerations lead us to our conclusion that transfer is not needed. There are no *qui tam* claims in the MDL, so the efficiencies to be gained by placing similar legal claims before the same judge are minimal. The *qui tam* action now before us was filed six years ago, in May 2012, and has a lengthy procedural history. *See United States ex rel. Nargol v. DePuy Orthopaedics, Inc.*, 865 F.3d 29, 33-34 (1st Cir. 2017), *cert. denied* (U.S. April 16, 2018) (No. 17-1108). The MDL proceeding is at an advanced stage, with several rounds of bellwether trials held, related appeals underway, potential retrial of the second bellwether proceedings to be conducted, and the parties' competing proposals for Section 1407 remand currently under submission. The *qui tam* action's scope was refined by the First Circuit, and upon remand the presiding judge has set it on a prompt course for resolution that includes a June 2018 discovery completion deadline. We see no need to disrupt the action's current course. Voluntary coordination among the parties (who are largely represented by counsel common to *United States ex rel. Nargol* and the MDL) and the two involved judges is an adequate alternative to transfer.

¹ DePuy Orthopaedics, Inc., DePuy, Inc., and Johnson & Johnson Services, Inc.

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IT IS THEREFORE ORDERED that the motion for transfer of the action listed on Schedule A is DENIED.

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

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

MDL No. 2244

SCHEDULE A

District of Massachusetts

UNITED STATES OF AMERICA, ET AL. v. DEPUY ORTHOPAEDICS, INC., ET AL.,
C.A. No. 1:12-10896