

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: Pursuant to Panel Rule 7.1, plaintiffs in the four actions listed on Schedule A move to vacate our orders that conditionally transferred their respective actions to MDL No. 2244. Certain defendants in the District of Colorado action, Colorado Joint Replacement and Portercare Adventist Health System, also move to vacate the conditional transfer order covering that action. Defendants DePuy Orthopaedics, Inc. (DePuy); Johnson & Johnson; and Johnson & Johnson Services, Inc. oppose the motions.

Plaintiffs in the Central District of California and District of Maryland actions do not dispute that their respective actions share questions of fact with actions pending in MDL No. 2244. Plaintiffs instead base their arguments against transfer primarily on the pendency of motions to remand their respective actions to state court and their desire that these motions be decided before transfer. Plaintiffs can present their motions to remand, if any, 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).

Plaintiffs in the remaining actions contend that their allegations are unique and therefore should be excluded from MDL No. 2244. We are of the opinion that both actions are sufficiently similar to the actions in the MDL to justify transfer. Plaintiffs in the District of Colorado *Henke* action contend that the plaintiff suffers from metal hypersensitivity, and the focus of the action thus is not limited to problems arising from the metal-on-metal grinding action claimed by most MDL plaintiffs. Plaintiffs' complaint, however, contains numerous allegations of defect similar to those made by plaintiffs in previously-transferred actions.

In the Eastern District of New York *Tanenbaum* action, plaintiff allegedly received a Pinnacle hip implant in a ceramic-on-metal configuration. Plaintiffs assert that claims regarding this configuration are not present in the MDL. Since the creation of MDL No. 2244, however, the Panel has transferred actions involving all configurations of Pinnacle hip implants. While it is unclear whether plaintiff's

¹ We note that 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.

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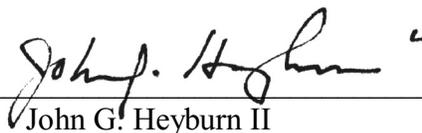
particular ceramic femoral head is involved in another MDL action, other actions in the MDL contain allegations regarding ceramic-on-metal hip implant configurations. *See, e.g., Conley v. DePuy Orthopaedics, Inc.*, No. 3:12-cv-02404-K (N.D. Tex.).

After considering all argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2244, 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 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). These actions involve injuries arising from the implantation of DePuy Pinnacle Acetabular Cup System hip implants and related components, and clearly fall within the MDL's ambit.

We are persuaded that all actions will benefit from the framework provided by the centralized proceedings for discovery and motion practice. As the litigation progresses, if the transferee judge determines that a given claim or action will no longer benefit from inclusion in MDL No. 2244, then we encourage him promptly to suggest that the Panel remand such action or claim 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 pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A are 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



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**IN RE: DEPUY ORTHOPAEDICS, INC., PINNACLE HIP
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SCHEDULE A

Central District of California

Evetta Tooley v. DePuy Orthopaedics, Inc., et al., C.A. No. 2:12-06181

District of Colorado

Dr. Clarence Henke, et al. v. DePuy Orthopaedics, Inc., et al., C.A. No. 1:12-02397

District of Maryland

Stephen M. Flach, et al. v. Johnson & Johnson, Inc., et al., C.A. No. 1:12-02112

Eastern District of New York

Ted Tanenbaum, et al. v. Depuy Orthopaedics, Inc., et al., C.A. No. 2:12-03807