

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**IN RE: STRYKER REJUVENATE AND ABG II HIP  
IMPLANT PRODUCTS LIABILITY LITIGATION**

MDL No. 2441

**TRANSFER ORDER**

**Before the Panel:** Pursuant to 28 U.S.C. § 1407(c), defendants<sup>1</sup> in three consolidated Eastern District of Louisiana actions that were filed by the same plaintiff, listed on Schedule A, move for transfer of the actions to the District of Minnesota for inclusion in MDL No. 2441. Plaintiff opposes the motion to transfer and, as an alternative, requests that his claims relating to the alleged mis-mating of components of his Stryker Rejuvenate hip implant be separated and remanded to the transferor court.

After considering all argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2441, and that transfer of the actions in their entirety 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 District of Minnesota was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged injuries from Stryker Rejuvenate and ABG II hip implants, particularly the implants' propensity to experience fretting and corrosion around the modular-neck junction. *See In re: Stryker Rejuvenate and ABG II Hip Implant Prods. Liab. Litig.*, 949 F. Supp. 2d 1378 (J.P.M.L. 2013). The consolidated cases now before us involve two injuries arising from the implantation of a Stryker Rejuvenate hip implant. One injury—fretting and corrosion of the device—clearly falls within the MDL's ambit. Plaintiff's other injury—the mis-mating of the femoral head and neck components of the device which necessitated a replacement surgery and allegedly caused additional injuries—is unique but sufficiently factually intertwined with the former to justify transfer of this entire controversy.

Plaintiff opposes transfer, arguing that this consolidated action involves unique facts and that transfer would be inconvenient to the parties and witnesses, which are primarily located in Louisiana. We respectfully disagree. While plaintiff's mis-mating allegations appear to be unique, there are a number of considerations that justify transfer of the *Kramer* litigation for inclusion in MDL No. 2441 in its entirety, rather than granting plaintiff's request to separate and remand certain claims. Most importantly, the claims regarding mis-mated components and fretting and corrosion are factually intertwined and cannot be cleanly separated.<sup>2</sup> The need for additional surgery is part of plaintiff's claims

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<sup>1</sup> Howmedica Osteonics Corp., Stryker Corp., and Stryker Sales Corp.

<sup>2</sup> *See, e.g., In re: Bank of Am., N.A., Mortgage Corp. Force-Placed Hazard Ins. Litig.*, MDL (continued...)

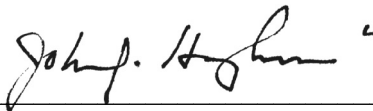
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for future damages, and plaintiff's physicians have opined that fretting and corrosion issues likely play a role in plaintiff's current condition. Moreover, despite the differences in the two theories of recovery, the same device—the Stryker Rejuvenate hip implant—is at the heart of this litigation. Significant background questions of fact are involved regarding the testing and development of the device that may entail duplicative discovery, and potentially overlapping motion practice may arise if the issues are litigated separately.

The transferee court may, of course, employ any number of pretrial techniques—such as establishing separate discovery and motion tracks for allegations concerning mis-mating of Rejuvenate components— to efficiently manage this litigation. Further, plaintiff's arguments regarding the inconvenience of a Minnesota forum when all witnesses are based in Louisiana are undercut by the fact that Section 1407 transfer is for pretrial proceedings only. There is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. *See In re: MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are transferred to the District of Minnesota and, with the consent of that court, assigned to the Honorable Donovan W. Frank for inclusion in the coordinated or consolidated pretrial proceedings.

#### PANEL ON MULTIDISTRICT LITIGATION



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Chairman

Marjorie O. Rendell  
Lewis A. Kaplan  
Ellen Segal Huvelle

Charles R. Breyer  
Sarah S. Vance  
R. David Proctor

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<sup>2</sup>(...continued)

2467, 959 F. Supp. 2d 1365 (J.P.M.L. 2013) (although Section 1407 allows the Panel to “‘separate any claim, cross-claim, counter-claim, or third-party claim’ from the remainder of the transferred action and to remand such claims to the transferor district[,] it does ‘not authorize the Panel to transfer one issue raised by a claim ... while remanding another issue raised by the same claim.’”) (citing *In re Air Crash Disaster at Duarte, Cal. on June 6, 1971*, 346 F. Supp. 529, 530 (J.P.M.L. 1972)).

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**SCHEDULE A**

Eastern District of Louisiana

KRAMER v. STRYKER ORTHOPEDICS, ET AL., C.A. No. 2:13-06038

KRAMER v. STRYKER ORTHOPEDICS, ET AL., C.A. No. 2:13-06039

KRAMER v. STRYKER ORTHOPEDICS, ET AL., C.A. No. 2:13-06041