

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

Anne-Lise Gercke v. Howmedica Osteonics Corp. et al,)
S.D. Florida, C.A. No. 9:13-80615)

MDL No. 2441

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiff in a Southern District of Florida action (*Gercke*) moves to vacate our order that conditionally transferred her action to MDL No. 2441. Defendant Howmedica Osteonics Corp. opposes the motion to vacate.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2441, 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 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. *See In re: Stryker Rejuvenate and ABG II Hip Implant Prods. Liab. Litig.*, --- F. Supp. 2d ----, 2013 WL 2635989 (J.P.M.L., June 12, 2013). This action involves injuries arising from implantation of a Rejuvenate hip implant and clearly falls within the MDL's ambit.

Plaintiff does not dispute that her action shares questions of fact with actions pending in MDL No. 2441. Plaintiff instead bases her arguments against transfer primarily on the pendency of her motion to remand the action to state court.¹ Plaintiff can present her motion for remand to the transferee judge. *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).

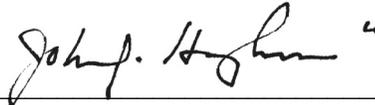
* Judge Sarah S. Vance took no part in the decision of this matter.

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 wishing to rule upon the remand motion generally has adequate time in which to do so.

-2-

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is 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



John G. Heyburn II
Chairman

Kathryn H. Vratil
Marjorie O. Rendell
Lewis A. Kaplan

Paul J. Barbadoro
Charles R. Breyer