

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:* Plaintiffs in five Western District of Oklahoma actions listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel's order conditionally transferring their actions to MDL No. 2441. Defendant Howmedica Osteonics Corp. opposes the motion.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions previously transferred to MDL No. 2441, 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. 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.*, 949 F. Supp. 2d 1378 (J.P.M.L. 2013). These actions involve injuries arising from the implantation of Stryker Rejuvenate or AGB II hip components and fall within the MDL's ambit.

Plaintiffs in the five actions do not dispute that their action shares questions of fact concerning Rejuvenate or AGB II hip implants with actions pending in MDL No. 2441. Plaintiffs instead base their arguments against transfer primarily on the pendency of their anticipated motions to remand to state court and their preference for having the Western District of Oklahoma rule on the motions to remand. These arguments are unconvincing. Plaintiffs can present their motions for remand, if they choose to file them, 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).

* Judges Marjorie O. Rendell and Lewis A. Kaplan did not participate 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 generally has adequate time to rule on a remand motion if it chooses to do so. Here, plaintiffs assert that they will seek remand to state court but have not yet so moved.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A 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



Sarah S. Vance
Chair

Charles R. Breyer
R. David Proctor

Ellen Segal Huvelle
Catherine D. Perry

**IN RE: STRYKER REJUVENATE AND ABG II HIP
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MDL No. 2441

SCHEDULE A

Western District of Oklahoma

BRUSHWOOD v. HOWMEDICA OSTEONICS CORP., ET AL., C.A. No. 5:15-917

DEES v. HOWMEDICA OSTEONICS CORP., ET AL., C.A. No. 5:15-918

INGRAM, ET AL. v. HOWMEDICA OSTEONICS CORP., ET AL., C.A. No. 5:15-919

TAYLOR, ET AL. v. HOWMEDICA OSTEONICS CORP., ET AL., C.A. No. 5:15-920

TODD, ET AL. v. HOWMEDICA OSTEONICS CORP., ET AL., C.A. No. 5:15-921