

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2197

TRANSFER ORDER

Before the Panel: Plaintiffs and healthcare defendants Stephen R Davenport, M.D., and Orthopedic Associates, Inc., in two Western District of Oklahoma actions move under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the actions, which are listed on the attached Schedule A, to MDL No. 2197. Responding defendants¹ oppose the motions to vacate.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions previously transferred to MDL No. 2197, 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 Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged injuries from DePuy's recalled ASR XL Acetabular Hip System. *See In re: DePuy Orthopaedics, Inc., ASR Hip Implant Prods. Liab. Litig.*, 753 F.Supp.2d 1378 (J.P.M.L. 2010). These actions involve injuries related to a DePuy ASR hip implants, and they clearly fall within the MDL's ambit.

Movants do not dispute that these actions share questions of fact concerning ASR hip implants with actions already pending in MDL No. 2197. They instead base their arguments against transfer primarily on the pendency of their motions to remand to state court and motions to dismiss, which movants prefer to have the respective transferor judges decide. But movants can present these motions to the transferee judge.² *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). Moreover, we note that we routinely have transferred actions involving claims against the principal defendants in an MDL and related claims against healthcare providers. *See, e.g., In re: Kugel Mesh Hernia Patch Prods. Liab. Litig.*, 560 F. Supp. 2d 1364, 1364-65 & n.1 (J.P.M.L. 2008).

¹ DePuy International Limited, Depuy Inc, Depuy Orthopaedics, Inc., Johnson & Johnson, Johnson & Johnson International, and Johnson & Johnson Services, Inc. (collectively, DePuy).

² 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 or motion to dismiss if it chooses to do so.

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IT IS THEREFORE ORDERED that these actions are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable David A. Katz for inclusion in the coordinated or consolidated pretrial proceedings.

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

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SCHEDULE A

Western District of Oklahoma

SILKWOOD, ET AL. v. DEPUY ORTHOPAEDICS, INC., ET AL., C.A. No. 5:15-1373
NUTTY, ET AL. v. DEPUY ORTHOPAEDICS, INC., ET AL., C.A. No. 5:15-1374