

**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: Plaintiff in the District of South Carolina action (*Nellenback*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring her action to MDL No. 2244. Defendants¹ oppose the motion.

On the basis of the papers filed and the hearing session held, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2244, 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 the 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). *Nellenback* involves injuries related to a DePuy Pinnacle Acetabular Cup System hip implant and falls within the MDL's ambit.

Plaintiff moves to vacate the conditional transfer order principally by arguing that federal jurisdiction is lacking over her case.² We are not persuaded by this argument. The Panel has held that such jurisdictional objections generally do not present an impediment to transfer.³ *See, e.g.*,

¹ DePuy, Inc.; DePuy Orthopaedics, Inc., now known as Medical Device Business Services, Inc.; and DePuy Synthes Sales, Inc. (collectively, DePuy).

² Plaintiff asks that the Panel remand her action to state court. However, "Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand." *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).

³ Moreover, under Panel Rule 2.1(d), 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.

In re: Prudential Ins. Co. of Am. Sales Practices Litig., 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”).

Plaintiff also argues that her injuries arise from a broken femoral stem and that this distinguishes her claims from those involved in the MDL proceedings. But we have transferred other cases involving femoral stem fractures over similar objections of plaintiffs. See Transfer Order in *Nutile v. DePuy Orthopaedics, et al.*, D. Massachusetts, C.A. No. 15-12996, MDL No. 2244, ECF doc. 1672 (Feb. 2, 2016) (rejecting the argument that “plaintiff husband’s injuries arise from fracture of the femoral stem . . . and are consequently unique and distinct”); Transfer Order in *Mondello v. DePuy Orthopaedics, et al.*, N.D. California, C.A. No. 14-2086, MDL No. 2244, ECF doc. 1356 (Aug. 12, 2014) (“*Mondello* contains factual allegations concerning an injury—femoral stem fracture—that is similar to those raised by other MDL No. 2244 plaintiffs.”). Thus, discovery in *Nellenback* likely will overlap with the general MDL discovery regarding such matters as the design, development, testing, approval, manufacture, and sale of the Pinnacle hip system, and transfer offers significant litigation efficiencies.

IT IS THEREFORE ORDERED that this action is 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



Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

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SCHEDULE A

District of South Carolina

NELLENBACK v. DEPUY, INC., ET AL., C.A. No. 2:21-00533