

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 Montana action (*Murphy*) 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.

After considering the arguments of counsel, 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). *Murphy* 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 by arguing principally 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); Johnson & Johnson Services, Inc., and Johnson & Johnson.

² Plaintiff argues at length that her motion to remand her action to state court is likely to be granted. 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

(continued)

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 claims must receive prompt attention due to her advanced age. While we are sympathetic to those arguments, they are best addressed by the transferee judge, who can structure pretrial proceedings to accommodate the needs of all parties to this litigation. Of course, if the transferee judge considers continued inclusion of a claim or action no longer advisable, he can accomplish Section 1407 remand with minimal delay by suggesting remand to the Panel. *See* Panel Rule 10.2.

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

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: DEPUY ORTHOPAEDICS, INC., PINNACLE
HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

MDL No. 2244

SCHEDULE A

District of Montana

MURPHY v. KB ORTHOPEDICS, INC., ET AL., C.A. No. 4:21-00049