

**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 Western District of Washington action (*Shattuck*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring his 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 forth 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). *Shattuck* 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 his 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 Synthes Sales, Inc., Johnson & Johnson, Johnson & Johnson Services, Inc., and Medical Device Business Services, Inc. (collectively, DePuy).

² Plaintiff argues at length that his motion to remand his 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 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, the transferor court has stayed the action pending our decision on plaintiff’s motion to vacate the CTO.

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 his claims should not be delayed, and that he should not have to comply with the rigorous claim substantiation orders⁴ in MDL No. 2244 before his motion to remand is resolved. We recently rejected plaintiff’s counsel’s highly similar arguments at the last hearing session. *See* Transfer Order, *Murphy v. KB Orthopedics, Inc.*, No. 4:21-cv-00049 (J.P.M.L. filed Aug. 10, 2021). Plaintiff should first present these arguments to the transferee judge.

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

⁴ These orders, as defendants note, often are used in large mass tort cases to “identify and cull potentially meritless claims and streamline litigation.” *In re Xarelto (Rivaroxaban) Prods. Liab. Litig.*, MDL No. 2592, 2020 U.S. Dist. LEXIS 140131, at *11 (E.D. La. Aug. 5, 2020).

**IN RE: DEPUY ORTHOPAEDICS, INC., PINNACLE
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SCHEDULE A

Western District of Washington

SHATTUCK v. A1A, INC., ET AL., C.A. No. 2:21-00945