

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 two actions pending, respectively, in the District of Connecticut (*Perfetti*) and the Western District of Oklahoma (*Nickerson*) listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel’s orders conditionally transferring their actions to MDL No. 2441. Defendant Howmedica Osteonics Corp. opposes the motion.

After considering the arguments 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 the reasons set forth 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 injuries allegedly caused by Stryker’s recalled Rejuvenate and ABG II modular-neck hip implant products. *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 related to the Stryker ABG II hip implants that plaintiffs in both actions received and, thus, fall within the MDL’s ambit.

Plaintiff in *Perfetti* opposes transfer by arguing principally that federal jurisdiction is lacking over her case. That argument is not persuasive, as the Panel routinely holds that arguments concerning the propriety of federal jurisdiction are insufficient to warrant vacatur. *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”).

Plaintiffs in *Nickerson* oppose transfer by arguing that the MDL settlement program does not apply to their case because plaintiff’s hip implant was removed more than ten years following implantation. They further argue that their claims can be more efficiently and expeditiously tried in W.D. Oklahoma than in the MDL. We are not persuaded by these arguments. The Panel typically does not condition transfer upon a plaintiff’s participation in a settlement.¹ Given the

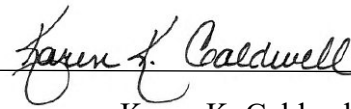
¹ *See, e.g., MDL No. 2672 – In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, J.P.M.L. doc. 2500 at n. 2 (“[W]e note that we have not conditioned

(continued)

undisputed factual overlap of *Nickerson* with the MDL proceedings, transfer is justified to facilitate the efficient conduct of the litigation as a whole. See *In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

IT IS THEREFORE ORDERED that these actions 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



Karen K. Caldwell
Chair

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

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

transfer of any otherwise factually-related action in this MDL upon plaintiffs’ participation in a settlement”).

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SCHEDULE A

District of Connecticut

PERFETTI V. CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, ET AL.,
C.A. No. 3:23-00075

Western District of Oklahoma

NICKERSON, ET AL. V. HOWMEDICA OSTEONICS CORP., C.A. No. 5:22-01050