

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: STRYKER LFIT V40 FEMORAL HEAD
PRODUCTS LIABILITY LITIGATION**

MDL No. 2768

TRANSFER ORDER

Before the Panel: Plaintiff in a Middle District of Florida action moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action (*Lakeland Regional*) listed on the attached Schedule A to MDL No. 2768. Defendants Howmedica Osteonics Corp. and Stryker Corp. oppose the motion.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2768, 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. Transfer is warranted for reasons set out in our order centralizing this litigation. In that order, we held that the District of Massachusetts was an appropriate Section 1407 forum for actions sharing factual questions arising from alleged defects in Stryker-branded LFIT Anatomic CoCR V40 femoral heads, a prosthetic hip replacement device. *See In re: Stryker Orthopaedics LFIT V40 Femoral Head Prods. Liab. Litig.*, 249 F. Supp. 3d 1353 (J.P.M.L. 2017). This action involves injuries arising from the implantation of a Stryker LFIT V40 femoral head and clearly falls within the MDL's ambit.

In opposing transfer, plaintiff argues that federal jurisdiction is lacking over the action and that the case is unique because it is a subrogation action brought under Florida's Workers Compensation Act. These arguments do not persuade us that transfer is inappropriate. Arguments concerning the propriety of federal jurisdiction are insufficient to warrant vacatur.¹ Also, as a practical matter, it does not appear that resolution of plaintiff's motion to remand is imminent. Plaintiff moved to remand the action in mid-February 2019, and that motion remains pending. Further, the remand motion is not yet even fully briefed, so there will be some delay in ruling on remand in either forum. Plaintiff can present its motion to remand to the transferee judge. Further, while the claims in *Lakeland Regional* may indeed be unique (defendants do not point to other similar subrogation actions), when, as here, "common factual issues exist, . . . the presence of different legal theories among the subject actions is not a bar to centralization." *In re: Bank of New York Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1372 (J.P.M.L. 2012). Should the need arise, the transferee judge can accommodate any unique discovery needs that this case presents.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District

¹ *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).

-2-

of Massachusetts and, with the consent of that court, assigned to the Honorable Indira Talwani for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

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SCHEDULE A

Middle District of Florida

LAKELAND REGIONAL HEALTH SYSTEMS, INC. v. HOWMEDICA OSTEONICS
CORP., ET AL., C.A. No. 8:19-247