

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: SMITH & NEPHEW BIRMINGHAM HIP
RESURFACING (BHR) HIP IMPLANT
PRODUCTS LIABILITY LITIGATION

MDL No. 2775

TRANSFER ORDER

Before the Panel: Plaintiff Charles M. Fondren and Defendant Greenwood Leflore Hospital move under Panel Rule 7.1 to vacate our order that conditionally transferred the *Fondren* action listed on Schedule A to the District of Maryland for inclusion in MDL No. 2775. Defendant Smith & Nephew, Inc., opposes both motions.

In opposition to transfer, movants argue that *Fondren* should not be transferred until the transferor court has decided the pending motion to remand *Fondren* to state court. As a general matter, however, the pendency of jurisdictional objections is not sufficient reason to delay or deny transfer.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). Plaintiff can present his remand motion to the transferee court.

Movants also argue that they will suffer delay and prejudice if *Fondren* is transferred to the MDL. Transfer of an action is appropriate if it furthers the expeditious resolution of the litigation taken as a whole, even if some parties to the action might experience inconvenience or delay. 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.”).

Accordingly, after considering the argument of counsel, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 2775, 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. In our order centralizing this litigation, we held that the District of Maryland was an appropriate Section 1407 forum for actions sharing factual questions concerning the design, manufacture, marketing or performance of Smith & Nephew’s BHR system. The actions in this MDL focus on complications arising from the use of a cobalt-chromium

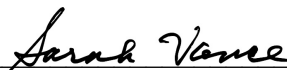
¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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alloy in the manufacture of the BHR components.² *See In re Smith & Nephew BHR & R3 Hip Implant Prods. Liab. Litig.*, 249 F. Supp. 3d 1348, 1350 (J.P.M.L. 2017). Plaintiff in *Fondren* alleges that he suffered complications arising from the metal-on-metal nature of the BHR component (the R3 metal liner) used in his hip replacement procedure.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Maryland and, with the consent of that court, assigned to the Honorable Catherine C. Blake for 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

² These complications include pain, adverse local tissue reaction, pseudotumors, bone and tissue necrosis, metallosis, or other symptoms, often necessitating revision surgery.

**IN RE: SMITH & NEPHEW BIRMINGHAM HIP
RESURFACING (BHR) HIP IMPLANT
PRODUCTS LIABILITY LITIGATION**

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SCHEDULE A

Northern District of Mississippi

FONDREN v. SMITH & NEPHEW, INC., ET AL., C.A. No. 4:18-00256