

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
Dec 13, 2022
Tammy H. Downs, Clerk
By: John Hibbs D.C.
DEP CLERK

IN RE: PROFEMUR HIP IMPLANT
PRODUCTS LIABILITY LITIGATION

MDL No. 2949

TRANSFER ORDER

Before the Panel:* Plaintiff in the Western District of Wisconsin action (*Parise*) 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. 2949. Defendants Microport Orthopedics, Inc., and Wright Medical Technology, Inc., 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. 2949, 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 Eastern District of Arkansas was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations regarding “the design, marketing and performance of the Profemur line of modular hip implants, including both titanium femoral necks and those made of cobalt chromium (CoCr). Plaintiffs contend that the modular devices are prone to micromovements that lead to fluid ingress into the bore, which leads to fretting and corrosion in the stem-neck junction, which in turn leads to metallosis and increased blood metal levels and, at times, fracture of the devices.” *In re Profemur Hip Implant Prod. Liab. Litig.*, 481 F. Supp. 3d 1350, 1351 (J.P.M.L. 2020). *Parise* falls within the MDL’s ambit because it involves injuries arising from the corrosion at the stem-neck junction of an allegedly defective Profemur hip implant.

Plaintiff’s primary argument against transfer is that defendants do not intend to settle her claims because they arise from an index surgery over ten years ago. Plaintiff asserts that her action will linger in the MDL without progress for at least a year before, she contends, it will require Section 1407 remand to the transferor court. Defendants respond by noting the factual overlap of *Parise* with other MDL actions and the need for uniform treatment of all Profemur cases. We do not find plaintiff’s arguments against transfer to be persuasive. There is undisputed factual overlap between *Parise* and the MDL actions. We typically do not condition transfer upon a plaintiff’s predicted participation in a settlement (much less one that has not yet been announced). *See, e.g.*, MDL No. 2672 – *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products*

* Judge Madeline Cox Arleo took no part in the decision of this matter.

Liability Litigation, J.P.M.L. doc. 2500 at n. 2 (“[W]e note that we have not conditioned transfer of any otherwise factually-related action in this MDL upon plaintiffs’ participation in a settlement”). Transferring *Parise* is beneficial to streamline any needed discovery and, more generally, to facilitate uniform handling of all Profemur cases in MDL No. 2949.

Plaintiff can present to the transferee judge her argument that her action should move forward while another category of MDL cases—cases in which plaintiffs had their hip implants removed less than ten years after implantation—settle. If the transferee judge ultimately determines that *Parise* is better situated to proceed in the transferor court, then the action can be remanded to the transferor court with a minimum of delay.

IT IS THEREFORE ORDERED that this action is transferred to the Eastern District of Arkansas and, with the consent of that court, assigned to the Honorable Kristine G. Baker 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

**IN RE: PROFEMUR HIP IMPLANT
PRODUCTS LIABILITY LITIGATION**

MDL No. 2949

SCHEDULE A

Western District of Wisconsin

PARISE V. WRIGHT MEDICAL TECHNOLOGY, INC., ET AL., C.A. No. 3:22-00324