WILENTZ
—ATTORNEYS AT LAW—

JOSHUA S. KINCANNON, ESQ.

T: 732.855.6141
F: 732.726.6541
jkincannon@wilentz.com

90 Woodbridge Center Drive
Suite 900 Box 10
Woodbridge, NJ 07095-0958
732.636.8000

January 5, 2023

VIA OVERNIGHT MAIL
The Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625

Re: Application Pursuant to R. 4:38A ("Centralized Management of Multicounty Litigation") Request for Multi-County Litigation Designation for DePuy/Johnson and Johnson Pinnacle MoM Hip Implants

Dear Judge Grant:

The below attorneys and firms submit this letter on behalf of fifty-one (51) Plaintiffs who have cases pending in Middlesex County, New Jersey involving one or more Pinnacle hip implants designed, manufactured, promoted, marketed, distributed, sold and supported by Defendants Johnson and Johnson and Depuy Synthes Sales, Inc. (collectively "Defendants").[1] The product this application seeks to centralize is the Pinnacle metal-on-metal or "MoM" hip implant system. This line of product has been in the stream of commerce since the early 2000s, resulting in hundreds of thousands of patients receiving defective Pinnacle hip implants.

Accordingly, as Plaintiffs anticipate that dozens of additional cases will be filed in the coming months, we respectfully request that the cases listed in the attached "Exhibit A" be given Multi-County Litigation Designation in accordance with R. 4:38A. Where, as here, the Administrative Office of the Courts is presented with large numbers of complex cases sharing similar products, injuries, and the same allegedly responsible party, a Multi-County Litigation designation promotes judicial efficiency and benefits all parties involved.

[1] See attached Exhibit A for the complete list of cases.

BACKGROUND

This application addresses the fifty-one currently pending cases, and any future similar product liability cases filed in the Superior Court against these Defendants alleging that Pinnacle hip implants were defective, and that those defects caused the implant to fail, resulting in serious injuries and the need for additional medical intervention.

The Pinnacle hip implant was manufactured and sold by Defendants and is known as a metal-on-metal or "MoM" hip system. MoM hip systems are unique in that they are made with articulating components made of the same or materially similar Cobalt Chrome alloy. Unfortunately, Pinnacle systems, like all MoM implants, release toxic heavy metals into the hip implant recipients' tissue, system, and bloodstream. Because of these adverse effects, MoM implants are no longer used in total hip replacement surgery.[2] Plaintiffs allege that these products are defective and unsafe for their designed and intended use.

THE PINNACLE HIP IMPLANT

In the 1960s and early 1970s, hip replacement manufacturers first began to market MoM hip replacements to surgeons. Unfortunately, these early MoM hip replacements caused a high rate of heavy metal poisoning resulting in tissue death, bone loss, and early failure of the implant.

When the metal cup and metal head of these implants rubbed together, they released toxic heavy metal cobalt and chromium debris into the body. The cobalt and chromium debris resulted in patients suffering heavy metal poisoning, causing tissue and bone death. These implants failed early, failed often, and were not as safe or effective as implants utilizing metal-on-plastic components and other alternative designs. As a result of the harm seen in the early generation of MoM hip systems, the medical community abandoned MoM hip systems in the 1970s.

Despite the prior failure of the first generation of MoM hip replacements to perform as intended, Defendants nonetheless began designing another generation of MoM hip replacements in the late 1990s and early 2000s. This included the Pinnacle system. Despite their knowledge that early MoM hip replacements were a failure and resulted in heavy metal poisoning, Defendants conducted only limited testing of the Pinnacle, including no clinical testing, before selling them for surgical implantation into the bodies of patients. To avoid comprehensive testing of the product in question, Defendants claimed to United States regulators that this system should be "grandfathered-in" because it was substantially similar to systems sold prior to May 28, 1976. Importantly, this loophole required no testing for safety or efficacy, and Defendants did not conduct any pre-market tests on the Pinnacle MoM system for safety or efficacy.

If Defendants *had* conducted testing relevant to the safety and efficacy of MoM implants before the Pinnacle was first released in the early 2000s, they would have affirmatively discovered that the Pinnacle system releases high amounts of toxic heavy metals resulting in an unreasonable risk of harm and revision surgeries. In fact, internal documents dating back to 1995 show Defendants' knowledge of MoM articulations producing metal wear particles, metal ion release, and poor wear results

[2] See https://www.fda.gov/medical-devices/metal-metal-hip-implants/concerns-about-metal-metal-hip-implants.

including scratches creating peaks and valleys on the surfaces of the articulating components. The toxicity due to heavy metals is progressive, with greater metal release over time and increasing clinical reaction. Unfortunately, the toxic heavy metals result in severe injury to the hip joint as well as various systemic maladies. Therefore, early intervention to remove the sources of toxicity is crucial. The sooner the Pinnacle system is revised, the less damage is sustained.

Defendants did eventually cease selling the MoM Pinnacle system in 2013, claiming that it was solely due to declining demand for the product and not related to safety. Tens of thousands of lawsuits in state and federal court, including an MDL, followed. Recently, the Pinnacle MDL has been shuttered, foreclosing a consolidated venue for current and putative Plaintiffs.[3]

COORDINATION IS APPROPRIATE

As set forth in the guidelines, multi-county litigation is warranted when a litigation, among other considerations, involves a large number of parties; many claims with common, recurrent issues of law and fact; there is geographical dispersion of parties; there is a high degree of commonality of injury; there is a value interdependence between different claims; and there is a degree of remoteness between the court and actual decision makers in the litigation.

This litigation meets the above criteria. There will be many common, recurrent issues of law and fact that are associated with these implants. These cases share common Defendants (and corporate witnesses), designs, materials, manufacturing, production and distribution methods, and underlying science. Additionally, there is geographical dispersion of the parties (as these products were sold throughout the nation), a high degree of commonality of injury; and a likely value interdependence among different claims. All of these considerations warrant MCL designation. The same policies and factors which led the Supreme Court to decide on May 16, 2017, that all pending and future Stryker LFIT CoCr V40 hip implant cases should be centralized for management purposes should compel the granting of the instant application.[4]

The Pinnacle cases all involve the recurrent legal issues of design defect, failure to warn, breaches of warranties and the possibility of manufacturing defects. There are significant overlapping factual liability issues relating to the selection and use of CoCr and MoM technology, how it was manufactured, sterilized, marketed and distributed, the nature of the defect(s), the failure to recall the product, failure to comply with good manufacturing practices, and a host of other related factual issues.

These cases suffer from a lengthy procedural history. All were initially filed in Middlesex County Superior Court, and were improperly removed by the Defendants. After many months of briefing at the district court, the MDL transferee court, and the Judicial Panel on Multi-District Litigation, these cases have all been remanded to Middlesex County and will be spread amongst different judges. Accordingly, they have suffered inordinate delay that an MCL designation can help

---

[3] See attached Orders from the JPML suspending the transfer of tag along cases and the Order from the MDL closing the MDL, attached collectively as Exhibit B.

[4] See https://www.njcourts.gov/sites/default/files/mcl/stryker-lfit-cocr-v40-femoral-heads/initialcmo.pdf.

remedy by, *inter alia*, allowing for efficiencies in discovery and administration that will conserve the resources of the parties and the judicial system.

This MCL will be sufficiently numerous. Currently, we know that by 2007, 90,000 Pinnacle implants had been sold. The product was thereafter sold and implanted into U.S. citizens for another six (6) years, until 2013. Unfortunately, the insidious and progressive nature of the toxic heavy metal poisoning will result in continued failures of these implants for many years to come.

STRUCTURE OF COORDINATION (VENUE)

The undersigned counsel contend that the interests of efficiency and resource conservation of the judiciary, as well as of the parties, would support a single MCL in which cases involving Pinnacle are coordinated. Due to the commonality of Defendants and allegations between Pinnacle cases, as well as significant overlap in relevant documents, corporate witnesses, expert discovery and counsel for the respective parties, coordination into a single MCL would serve the purposes of Rule 4:38A, in that it would affect considerable conservation of time and resources. Pursuant to the Mass Tort Guidelines and Criteria for Designation, questions of fairness, the locations of the parties and counsel, and the existing civil and mass tort caseload are considered in selecting an MCL venue.

Plaintiffs propose the following New Jersey venues for consolidation as there are arguments favoring two potential MCL counties:

- Bergen: all current orthopedic implant MCL cases are currently venued in Bergen County;
- Middlesex: all currently filed Pinnacle cases are pending in Middlesex County. Middlesex County is the corporate home to Defendant Johnson & Johnson's headquarters. According to the New Jersey Court's website, Middlesex County currently has the fewest pending MCLs.

In light of all the factors discussed above, Plaintiffs respectfully request that the New Jersey Supreme Court designate the JNJ/DePuy Pinnacle hip implant cases as Multicounty Litigation for Centralized Management pursuant to Rule 4:38A. Plaintiffs defer to the judiciary to define the locus of the MCL(s) necessary to effectuate the policies underlying Rule 4:38A and will happily pursue their cases in whatever MCL venue the Administrative Office of the Courts deems appropriate.

Respectfully submitted,

WILENTZ, GOLDMAN & SPITZER, P.A.

By: /s/ Joshua S. Kincannon
Joshua S. Kincannon, Esq.

/s/ Michele Stephen, Esquire

MAGLIO CHRISTOPHER & TOALE LAW FIRM
Michele Stephan, Esquire (FL Bar #96628)
Michael Cowgill, Esquire (FL Bar #1010945)
Ilyas Sayeg, Esquire (FL Bar # 99140)
1605 Main Street, Suite 710
Sarasota, FL 34236
(941) 952-5242

Attorneys for Plaintiffs

; mm
Enclosures

cc: All Counsel

Exhibit A

PLAINTIFF	DOCKET NO.
Altholz, Tobi	L-006897-21
Arnold, Alan	L-001578-22
Baker, James	L-006162-22
Bell-Dixon, Tonya	L-005599-22
Bryant, Beth	L-005600-22
Byrne, Kathleen	L-006163-22
Deal, Vicki	L-002918-22
Dennison, Gloria	L-000781-22
Dickey, Ryan	L-001309-22
Drum, Jeremiah	L-001838-22
Everett, Geneie	L-001305-22
Flores, Augustin	L-001306-22
Galileo, Laura	L-005601-22
Goodinson, Charles	L-000708-22
Green, Donna	L-001840-22
Guenther, Debra	L-006164-22
Hitchcock, David	L-004905-21
Hopkins, Thomas	L-005602-22
Hussey, Curtis	L-003266-22
Hutton, Richard	L-002919-22
Keys, Vincent	L-002924-22
Kissell, William	L-001700-22
Koeppen, Karin	L-001576-22
Koschak, Michael	L-001701-22
Kurtzbein, Deborah	L-001307-22
Lassen, Clifford	L-001699-22
Lord, Michael	L-001577-22
Marshall, Harbert	L-002922-22

PLAINTIFF	DOCKET NO.
McClung, Thomas	L-005603-22
Menein, Mary	L-006161-22
Monical, Guy	L-006740-21
Munroe, Robert	L-001580-22
Nyland, Gregory	L-002920-22
Penichter, Robin	L-005605-22
Quaintance, Susan	L-001308-22
Reifsnyder, Constance	L-005676-22
Reno, Donna	L-003256-22
Rickert, Stephen	L-002926-22
Robertson, Eric	L-001703-22
Schwab, Gary	L-001836-22
Shelnutt, Ganita	L-006828-21
Sherman, John	L-002921-22
Skocpol, Clinton	L-001835-22
Teague, Joseph	L-005677-22
Thick, Gary	L-004668-21
Vuckovich, Andrew	L-003265-22
Vukmer, Robert	L-001579-22
Watford, Bill	L-005679-22
Wingerter, David	L-001702-22
Wood, Claude	L-001837-22
Zima, James	L-002923-22

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS, INC., PINNACLE HIP IMPLANT PRODUCTS LIABILITY LITIGATION	§	MDL Docket No. 3:11-MD-2244-K
	§	Honorable Ed Kinkeade

ORDER

This MDL has effectively concluded after four full bellwether trials, the start of a fifth trial, millions of documents produced, thorough expert discovery, several hundred depositions, and hundreds of mediations. Based on a careful review of the docket and thousands of individual cases, the Court believes that all is left is case-specific discovery and trial in a few remaining cases and that this Multidistrict Litigation will no longer benefit from consolidated pretrial proceedings.

I. Formation of MDL 2244

As background, on May 24, 2011, the Judicial Panel on Multidistrict Litigation ("JPML" or "the Panel") transferred three related cases to this Court and explained, "[w]e are confident in the transferee judge's ability to streamline pretrial proceedings in all actions, while concomitantly directing the appropriate resolution of all claims." Doc. No. 1. The Panel held that these cases shared "factual questions as to whether

DePuy's Pinnacle Acetabular Cup System, a device used in hip replacement surgery, was defectively designed and/or manufactured, and whether defendants failed to provide adequate warnings concerning the device." *Id.*

II. Consolidated Pre-Trial Proceedings

By January 2012, those three cases had grown to 889. Doc. No. 81. By agreement of the parties, the Court appointed a Special Master because it was "clear that this MDL" would "present many difficult issues" and "require an inordinate amount of attention and oversight from the Court." *Id.* From 2012 to 2018, those 889 cases increased to one of the largest MDL dockets in history, at one point consisting of more than 10,000 cases. *See, e.g.*, Doc. No. 989. During that time, the Court presided over "extensive motion practice, discovery, and bellwether trials consuming 134 days of trial and more than 31,500 pages of trial transcripts." Doc. No. 889. By 2018, the Court had considered and heard argument regarding many of the "more than 880 entries on the docket," the parties had conducted "approximately 300 depositions," and produced "more than 100 million pages of documents." *Id.*

In addition to this extensive discovery, all parties are directed to the Special Master's Status Report filed February 17, 2022, Doc. No. 1209, Defendants' Response Opposing Motion for Suggestion of Remand and Cessation of Transfer of New Cases, Doc. No. 1210, and the Plaintiffs' Executive Committee's Status Report, Doc. No. 1211.

III. Bellwether Trials

This products-liability MDL required the application of the substantive laws of different states. This Court commenced the first bellwether trial on September 2, 2014, in a case involving a plaintiff applying Montana law. *Paoli v. DePuy Orthopaedics, Inc., et al.*, No. 3:12-cv-04975-K. A second bellwether trial began on January 8, 2016, with five plaintiffs, applying Texas law. *See, e.g., Aoki, et al., v. DePuy Orthopaedics, Inc., et al.*, No. 3:13-cv-01071-K. The Court also conducted additional full bellwether trials beginning September 21, 2016, applying California and New York law. *Andrews, et al., v. DePuy Orthopaedics, Inc., et al.*, No. 3:15-cv-03484-K; and *Alicea, et al., v. DePuy Orthopaedics, et al.*, 3:15-cv-03489-K. A fifth bellwether trial applying Texas law began on January 16, 2019, but settled before the case was submitted to the jury. *See Aoki, et al., v. DePuy Orthopaedics, Inc., et al.*, No. 3:13-cv-01071-K.

IV. Materials Available to Transferee Courts

The transferee courts that receive cases from this MDL will have the benefit of this Court's rulings on various issues related to personal jurisdiction, summary judgment, and admissibility pursuant to the rules of evidence and the *Daubert* standard based on the memorandum opinions and orders entered in those cases. An illustrative, but non-exhaustive list, of the proceedings in this MDL has been maintained by the Court throughout its duration at: https://www.txnd.uscourts.gov/mdl-311-md-02244.

V. Procedure for Suggestion of Remand and Transfer

As of March 31, 2019, 10,129 cases were assigned to this Court. *See* Master Case List, Doc. No. 989. By May 31, 2020, there were 8,542 cases. Master Case List, Doc. No. 1106. On May 31, 2021, there were 6,039 cases. Master Case List, Doc. No. 1151.

As of yesterday, May 31, 2022, there are 848 remaining cases. *See* Master Case List, Doc No. 1237. Of these remaining cases, more than 650 have not complied with this Court's Case Management Orders and may be dismissed if the deficiencies are not cured in the next 60 days. *See* Special Master's Report, Doc 1238 (May 31, 2022).

Given the limited number of cases now left before it and the procedural posture of the litigation, the Court does not believe that continued centralization in the Northern District of Texas would serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.

Beginning July 1, 2022, Defendants are ORDERED to provide this Court a list of all active cases, on the first day of each month, that have complied with CMO 12 and a recommendation whether each case is ripe for remand or transfer. Counsel for plaintiffs in those actions are invited to provide a response to such recommendation within seven (7) days thereafter. It is the Court's intention to enter a first suggestion of remand or transfer of certain cases in July 2022 and issue successive orders on a

monthly basis as it determines each case is ready for case-specific discovery and trial, beginning with the first-filed cases.

SO ORDERED.

Signed June 1st, 2022.

Ed Kinkeade

ED KINKEADE
UNITED STATES DISTRICT JUDGE

New filing in IN RE: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation: ***TEXT ONLY ORDER* MINUTE ORDER (jpml-0:2011-md-02244)**

DocketBird
Wed 6/1/2022 3:48 PM
To: Leslie Williams <lwilliams@mctlaw.com>

DOCKETBIRD

Hello,

The following text notice was just entered in ***IN RE: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation***. DocketBird has updated the docket sheet for this case accordingly.

Case: ***IN RE: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation* (jpml-0:2011-md-02244)**

Court: Judicial Panel on Multidistrict Litigation

2677. ***TEXT ONLY ORDER*** MINUTE ORDER SUSPENDING RULE 7.1(a) -- Panel Rule 7.1(a), requiring notification to the Clerk of the Panel of potential tag-along actions, is hereby suspended in this litigation until further notice. Signed by Clerk of the Panel John W. Nichols on 6/1/2022. Associated Cases: MDL No. 2244 et al.

Team DocketBird

DocketBird ID:
2022/06/01/[$LATEST]eb18268d776d458596fa8293aee39fb5|t515fol3rgue8n2p1gfk473t4j2nhluj4s193bo1

You are receiving this notification because Michele Stephan added you to the DocketBird distribution list for this case.

Made by **Mink LLC**
Las Vegas, NV