

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: STRYKER REJUVENATE AND
ABG II HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL No. 13-2441 (DWF/FLN)

This Document Relates to

Thane Morgan, MD, and Amarillo Sports
Medicine & Orthopedic Center LLP,

Plaintiffs,

v. Civil No. 15-3849 (DWF/FLN)

Stryker Corporation, Stryker Sales
Corporation, and Howmedica Osteonics
Corporation,

Defendants.

**ORDER DENYING MOTION FOR
SUGGESTION TO REMAND**

Plaintiffs Thane Morgan, MD (“Morgan”), and his medical practice, Amarillo Sports Medicine & Orthopedic Center LLP (“Amarillo”) (collectively, “Plaintiffs”) filed this action against Defendants Stryker Corporation, Stryker Sales Corporation, and Howmedica Osteonics Corporation (collectively, “Defendants”) after Morgan learned that Defendants’ artificial hip product—which Morgan had installed in 135 patients—was defective. Morgan claims that more than 90 of his patients had to undergo revision surgery due to Defendants’ defective product, and as a result, Morgan and Amarillo suffered reputational injury and economic harm.

On October 14, 2015, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred this case from the Northern District of Texas to this Multidistrict Litigation (“MDL”). (MDL No. 13-2441 (DWF/FLN), Doc. No. 717.) In its Transfer Order, the JPML noted that Plaintiffs’ case involves factual allegations central to other cases in the MDL: “At the core of [Plaintiffs’] action are allegations related to defendants’ statements about the safety of recalled Stryker hip implants and their propensity to generate excessive metal debris and/or metal ions, kill surrounding tissue and prematurely fail, which are typical of the allegations in MDL No. 2441 actions.” (*Id.*) The JPML acknowledged that Morgan and Amarillo—as a provider physician and business—may have claims distinct from the patient-plaintiffs who have had Stryker hips implanted in their bodies. (*Id.*) But, the JPML concluded that this uniqueness “does not provide a sufficient reason to deny transfer in light of the significant overlapping factual allegations.” (*Id.*) Still, at the end of the Transfer Order, the JPML left open the possibility that at some point, Plaintiffs’ case might “no longer benefit from inclusion in MDL No. 2441,” at which point the transferee judge could suggest that the JPML remand the action to the transferor court. (*Id.*)

In determining whether to file a suggestion for remand with the JPML, which has sole discretion to remand a case, a transferee court relies on the standards that the JPML uses. *In re Express Scripts, Inc., PBM Litig.*, MDL No. 05-1672, Civ. No. 05-1064, 2010 WL 5149270, at *1 (E.D. Mo. Dec. 13, 2010); *In re Bridgestone/Firestone, Inc., ATX, ATX II, & Wilderness Tires Prods. Liab. Litig.*, 128 F. Supp. 2d 1196, 1197 (S.D. Ind. 2001). As such, the transferee court should consider whether remand would promote the

convenience of the parties and witnesses, as well as the just and efficient disposition of cases. *In re Express Scripts*, 2010 WL 5149270, at *1; *see also* 28 U.S.C. § 1407.

“Remand is inappropriate . . . when continued consolidation will ‘eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.’” *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 668 (S.D. Tex. 2005) (quoting *In re Heritage Bonds Litig.*, 217 F. Supp. 2d 1369, 1370 (J.P.M.L. 2002)).

Here, the Court concludes that remand, at this time, would not further the purposes of the MDL, including convenience, efficiency, and fairness. Rather, the Court agrees with Defendants that Plaintiffs’ claims and the claims of the patient-plaintiffs in the MDL present similar questions of law and fact and that all plaintiffs will need to engage in much of the same discovery. As such, the Court denies Plaintiffs’ request to file a suggestion to remand with the JPML. That said, the Court notes that if, by September 15, 2017, the parties have not progressed in the litigation or settlement of Plaintiffs’ claims in this member case, the Court will consider granting a renewed motion for suggestion to remand by Plaintiffs.

Based on the files, records, and proceedings herein, and for the reasons stated above, **IT IS HEREBY ORDERED** that Plaintiffs’ Motion for Suggestion to Remand (Civ. No. 15-3849 (DWF/FLN), Doc. No. [12]; MDL No. 13-2441 (DWF/FLN), Doc. No. [846]) is **DENIED WITHOUT PREJUDICE**.

Dated: January 4, 2017

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge