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

IN RE: DEPUY ORTHOPAEDICS, INC. PINNACLE HIP IMPLANT PRODUCTS LIABILITY LITIGATION	§	MDL Docket No.
This Order Relates To:	§	
Andrews – 3:15-cv-03484-K	§	
Davis – 3:15-cv-01767-K	§	3:11-MD-2244-K
Metzler – 3:12-cv-02066-K	§	
Rodriguez – 3:13-cv-3938-K	§	
Standerfer – 3:14-cv-01730-K	§	
Weiser – 3:13-cv-03631-K	§	

ORDER DENYING DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Before the Court is Defendants' Motion to Dismiss for Lack of Personal Jurisdiction ("Defendants' Motion") [*Andrews*, 3:15-cv-03484-K, Doc. 20; *Davis*, 3:15-cv-01767-K, Doc. 24; *Metzler*, 3:12-cv-02066-K, Doc. 25; *Rodriguez*, 3:13-cv-03938-K, Doc. 19; *Standerfer*, 3:14-cv-01730-K, Doc. 22; and *Weiser*, 3:13-cv-03631-K, Doc. 23]. For the reasons set forth herein, Defendants' Motion is **DENIED**.

BACKGROUND

Pursuant to 28 U.S.C. § 1407, the United States Judicial Panel on Multidistrict Litigation ordered coordinated or consolidated pretrial proceedings in this Court of all actions involving the Pinnacle Acetabular Cup System hip implants ("Pinnacle Device") manufactured by Defendant DePuy Orthopaedics, Inc. The

DePuy Pinnacle multidistrict litigation ("MDL") involves DePuy's design, development, manufacture, and distribution of the Pinnacle Device. The Pinnacle Device is used to replace diseased hip joints and was intended to remedy conditions such as osteoarthritis, rheumatoid arthritis, avascular necrosis, or fracture, and to provide patients with pain-free natural motion over a longer period of time than other hip replacement devices. The MDL has now been pending over five years.

In June 2011, the Court entered Case Management Order #1 [No. 3:11-MD-2244-K (Doc. No. 20)] that contemplated, among other things, the ability for plaintiffs to file their cases directly in this MDL proceeding rather than filing elsewhere and waiting for transfer to this MDL. Specifically, paragraph 13 of that Order provided that "[i]n order to eliminate delays associated with the transfer of cases in or removed to other federal district courts to this Court, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL 2244 may file his or her case directly in the MDL proceedings in the Northern District of Texas." Case Management Order #1 further stated that "[u]pon completion of all pretrial proceedings applicable to a case filed directly in the Northern District of Texas, this Court may transfer the case, pursuant to 28 U.S.C. § 1404, to a court of appropriate jurisdiction for trial, based on the recommendations of the parties to that case." *Id.* ¶ 17.

Defendants and Plaintiffs, represented here by the Plaintiffs' Executive Committee, agreed to a bellwether trial process, in which the Court would try

representative cases in the Northern District of Texas to allow juries to assess the claims, assess the procedure for trying them, and illustrate how the parties could value the cases. In September and October 2014, the Court held the first bellwether trial, involving a Montana Plaintiff and her husband (the "*Paoli*" bellwether, No. 3:12-cv-04975-K). The Court held a second bellwether trial in January through March 2016, consolidating five cases brought by Texas Plaintiffs [*Aoki* – 3:13-cv-1071-K; *Christopher* – 3:14-cv-1994-K; *Greer* – 3:12-cv-1672-K; *Klusmann* – 3:11-cv-2800-K; *Peterson* – 3:11-cv-1941-K (collectively, the "*Aoki*" bellwether)]. Defendants did not object to personal jurisdiction in these previous bellwether cases.

On July 15, 2016, the Court entered a Scheduling Order providing that six cases involving California plaintiffs, identified above, be set for a third bellwether trial beginning September 26, 2016. Each of the cases subject to Defendants' Motion were directly filed with this Court, pursuant to the "direct-file" provision of Case Management Order #1. Responding to this Scheduling Order, Defendants' Motion now seeks to dismiss these six cases under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. Specifically, Defendants' Motion contends that (1) there is no general personal jurisdiction as no Defendant in these cases is a Texas corporation or has its principal place of business in Texas; (2) there is no specific personal jurisdiction as none of the Plaintiffs allege they were implanted with Pinnacle devices in Texas, suffered injuries in Texas, or that their cases have any relevant connection to Texas; and (3) the Court lacks jurisdiction over Defendants

Johnson & Johnson, Johnson & Johnson Services, Inc., Johnson & Johnson International (collectively, the "J&J Companies") and DePuy Synthes, Inc. because these entities are holding or parent companies that lack any contacts with Texas that support personal jurisdiction. Having considered the briefing of both parties, the Court addresses each of Defendants' grounds for dismissal in turn.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(2) permits a party to move for dismissal for lack of personal jurisdiction. A court may exercise "general jurisdiction" over a nonresident defendant when the defendant's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (citation omitted). A court may exercise "specific jurisdiction" over a nonresident defendant when the litigation results from injuries that arise out of or relate to the defendant's activities in the forum state. *Id*. The defendant's contacts with the forum state must show that it "reasonably anticipates being haled into court" there. *Luv N' care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 470 (5th Cir. 2006). The plaintiff bears the burden of establishing a *prima facie* case of personal jurisdiction. *Quick Techs., Inc. v. Sage Grp. PLC*, 313 F.3d 338, 343 (5th Cir. 2002). "[T]he court must accept as true all uncontroverted allegations in the complaint and must resolve any factual disputes in favor of the plaintiff." *ITL Int'l, Inc. v. Constenla, S.A.*, 669 F.3d 493, 496 (5th Cir. 2012).

Personal jurisdiction exists if the relevant state's long-arm statute extends to the defendant and exercise of such jurisdiction is consistent with due process. *Johnston v. Multidata Sys. Int'l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008). Where the long-arm statute extends to the limits of federal due process, however, this two-step inquiry collapses into one federal due process analysis. *Id.* Both the Texas and California long-arm statutes extend as far as constitutional due process allows. *See McFadin v. Gerber*, 587 F.3d 753, 759 (5th Cir. 2009); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004).

The Due Process Clause permits the exercise of personal jurisdiction over a non-resident when (1) the defendant has established minimum contacts with the forum state and (2) the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Kelly v. Syria Shell Petroleum Dev., B.V.*, 213 F.3d 841, 854 (5th Cir. 2000). The minimum contacts requirement can be established through specific or general jurisdiction. *Id.*

ANALYSIS

As an initial matter, Plaintiffs and Defendants disagree on whether Texas or California is the relevant state for the Court's jurisdictional inquiry. Defendants contend that their contacts with Texas should be considered because the cases were directly filed in this Texas-based MDL. Plaintiffs contend that California is the relevant state for the inquiry because they are California residents who were implanted with the device in California and suffered injury there. Plaintiffs assert

that their cases should be treated as if originally filed in California and that this Court has personal jurisdiction to the same extent that a California-based court would have jurisdiction.

A. California is the Relevant Forum State.

Notably, all parties acknowledge in contemporaneous filings on Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) that the substantive law of California applies to Plaintiffs' claims. Yet Defendants contend that personal jurisdiction in these direct-filed cases should be assessed differently from those transferred to this Court by order of the Judicial Panel on Multidistrict Litigation and that Texas is the relevant state for jurisdictional purposes. Case Management Order #1, however, does not contemplate treating the cases differently based solely on the mechanism by which they reached this MDL. Construing it otherwise would potentially penalize plaintiffs who filed directly "to eliminate delays associated with the transfer of cases in or removed to other federal district courts to this Court, and to promote judicial efficiency" as that Order stated. Furthermore, Case Management Order #1 does not "expressly acknowledge[] that each direct-file case must be transferred," as Defendants' Reply contends. Instead, the Order states that "this Court *may* transfer the case, pursuant to 28 U.S.C. § 1404, to a court of appropriate jurisdiction for trial, *based on the recommendations of the parties to that case*." CMO #1 ¶ 17 (emphasis added).

An MDL court has the authority to, prior to remanding cases to a court of original jurisdiction, conduct bellwether trials "of a centralized action or actions originally filed in the [MDL] court." Manual for Complex Litigation § 20.132. As other courts have found, cases directly filed in an MDL are treated "as if they were transferred from a judicial district sitting in the state where the case originated." *In re Yasmin & Yaz (Drospirenone) Mktg., Sales Practices & Products Liab. Litig.*, 3:09-MD-02100-DRH, 2011 WL 1375011, at *5–6 (S.D. Ill. Apr. 12, 2011). Although Defendants note that this line of cases typically deals with choice-of-law issues, they offer no compelling reason why the same principle should not apply here. As numerous courts have found, MDL courts may exercise jurisdiction over transferred cases. *See In re Testosterone Replacement Therapy Prods. Liab. Litig.*, 136 F. Supp. 3d 968, 973 (N.D. Ill. 2015); *In re Norplant Contraceptive Prods. Liab. Litig.*, 915 F. Supp. 845, 852 (E.D. Tex. 1996). Indeed, a transfer "accomplishes but a change of courtrooms." *In re Ford Motor Co.*, 591 F.3d 406, 413 n.15 (5th Cir. 2009). Defendants' technical argument that direct-filed cases are treated differently from transferred ones for this purpose alone would subvert the important goal of allowing plaintiffs to file directly with the MDL court to help resolve their claims efficiently to the benefit of all parties. Accordingly, the Court finds that California is the relevant state for the jurisdictional inquiry on these Plaintiffs' cases.

B. The Court Does Not Have General Personal Jurisdiction over Defendants.

Defendants assert that they are not subject to general jurisdiction in Texas because they are not Texas companies, are not headquartered in Texas, and do not have contacts with Texas that are so continuous and systematic that it would be fair to treat them as though they are based here. Plaintiffs' Response does not challenge that assertion, and Plaintiffs thus do not make the *prima facie* showing necessary for general personal jurisdiction over Defendants in Texas.

Nor do Plaintiffs contend that any Defendant has the continuous and systematic contacts necessary to support general personal jurisdiction in California. Although the Court finds that California is the relevant state for its jurisdictional inquiry, Plaintiffs have not made the *prima facie* showing necessary for this Court to assert general personal jurisdiction over Defendants in either California or Texas. Consequently, the Court finds it has no general personal jurisdiction over Defendants in the cases at issue.

C. The Court Has Specific Personal Jurisdiction over Defendants.

Although Defendants contend that the Court's exercise of personal jurisdiction would violate due process, they do not argue that the exercise of jurisdiction over them in this case offends traditional notions of fair play and substantial justice. Accordingly, the Court will examine only whether Defendants have the requisite minimum contacts with the relevant state—which, as determined above, is California.

Because Defendants assert that Texas is the sole relevant state for the Court's jurisdictional inquiry, they do not effectively challenge Plaintiffs' ample allegations of the Defendants' contacts with California. *See* Resp. at 14-24. Among other things, Plaintiffs allege that Defendants manufactured, marketed, and sold a defective product to Plaintiffs' California physicians who implanted them in California and that Plaintiffs suffered injuries as a result of this product in California. *Id.* at 15. Plaintiffs further contend that Defendants marketed the product at meetings in California, contracted with sales representatives in California, held meetings with surgeons and patients in California, hired a California resident as a consulting surgeon on the product, worked with other California-based consultants, tracked patient outcomes in California, and hired two California firms to prepare studies on metal-on-metal bearings. *Id.* at 15-17. Taken together, these are sufficient minimum contacts with California to exercise specific personal jurisdiction. *See Luv N' care*, 438 F.3d at 470.

Plaintiffs also contend that Defendants have waived their jurisdictional objection by previously waiving their objection to venue for bellwether trials in this MDL and through their litigation conduct with respect to these cases. Because the Court determines that specific personal jurisdiction exists, it does not reach the question of waiver.

Regarding the J&J Companies and DePuy Synthes, Inc., the Court found previously that "the evidence shows that the Johnson & Johnson Cos. [including

DePuy Synthes] (1) hosted a nationwide satellite telecast to physicians all over the country . . . to tout the advantages of the Pinnacle Device, including representations of the benefits of metal-on-metal hip replacements and fluid film lubrication that are in issue in this case; (2) gave direction regarding advertising content and appearance for the Pinnacle Device; (3) managed the recall of another implant device and redirecting customers to the Pinnacle line; (4) made a website available to DePuy for doctors and patients and anyone else seeking information to view advertisements about the Pinnacle Device; and (5) placed their name on all Pinnacle Device advertising, literature, products, and packaging that contained representations that are in issue in this case and that were distributed across the country . . . for health care providers and doctors to see." Order Denying Defs.' Mot. to Dismiss and for Summ. J. (MDL 3:11-md-2244, Doc. 101) at 15-16. As alleged by Plaintiffs, distribution of false information to consumers within a state sufficiently subjects a defendant to the jurisdiction of courts of that state. *Guidry v. U.S. Tobacco Co., Inc.*, 188 F.3d 619 628 (5th Cir. 1999). Plaintiffs again offer similar examples of these actions by the J&J Companies and DePuy Synthes, Inc. in California. *See* Resp. at 22-24. Therefore, based on these Defendants' activities directed toward California and this Court's previous ruling, the Court finds that specific personal jurisdiction exists with regard to the J&J Companies and DePuy Synthes, Inc. in these cases.

CONCLUSION

For these reasons, the Court finds that Plaintiffs have met their burden to establish specific personal jurisdiction over Defendants. Consequently, Defendants' Motion to Dismiss for Lack of Personal Jurisdiction is **DENIED**.

SO ORDERED.

Signed September 20th, 2016.

Ed Kinkeade

ED KINKEADE
UNITED STATES DISTRICT JUDGE