

Document: J&J Urges Halt to Hip Implant Trial in Dallas

J&J Urges Halt to Hip Implant Trial in Dallas

Texas Lawyer (Online)

August 17, 2017 Thursday

Copyright 2017 ALM Media Properties, LLC All Rights Reserved Further duplication without permission is prohibited

TEXAS LAWYER

Length: 791 words

Byline: Amanda Bronstad

Body

After losing **hip implant** verdicts of \$502 million and \$1.04 billion, it's no surprise that Johnson & Johnson's DePuy Orthopaedics Inc. doesn't want to go to **trial** again next month.

But what it does want is a bit unusual.

In court filings this month, Johnson & Johnson attorney John Beisner has sought to **halt** a Sept. 5 **trial**, but he also wants to remand more than 9,300 of the products liability cases pending **in Dallas** over DePuy's Pinnacle device back to the courts from whence they came.

In a [petition for writ of mandamus](#), Beisner, a Washington, D.C., partner at New York's [Skadden, Arps, Slate, Meagher & Flom](#), has asked ▼ the U.S. Court of Appeals for the Fifth Circuit to **halt** the upcoming **trial** of eight plaintiffs, all from New York, scheduled to take place before U.S. District Judge [Ed Kinkeade](#) ▼. He's raising the same argument **in** prior writ petitions and **in** the pending appeals of the two prior verdicts: The cases don't belong **in** Kinkeade's courtroom.

"**In** short, the MDL court has decided that it is no longer constrained by the MDL statute or personal jurisdiction principles and can order **trials** of as many cases as it chooses instead of remanding these cases to courts of proper jurisdiction, as required by the MDL statute and basic jurisdictional principles," Beisner wrote. "Left unchecked, these rulings would encourage other MDL courts to

stretch their authority to try claims, regardless of the relevant contacts with the forum or petitioners' consent."

But plaintiffs attorney Mark Lanier, anticipating Johnson & Johnson's venue fight, [moved](#) last month to remand some, but not all, of the cases for **trial**. He argued that cases brought **in** California and New York could use pretrial rulings Kinkeade has already made involving those state laws.

"This is a case where there are over 9,000 plaintiffs, and most of them are elderly," said Lanier, of [The Lanier Law Firm](#) **in** Houston. "They're **hip implants**. And what DePuy has said is that it will not settle any of these cases. So if **J&J**/DePuy won't settle any of them, and we have to try them, we need to come up with some **trial** schedule where we can get at least to the older people before they die."

MDL judges are assigned to oversee pretrial matters, but the idea is for them to send cases back to their original courts for **trial**. **In** court papers, Lanier is pushing for Kinkeade to oversee **trials in** other courts. Other MDL judges have done that **in** a pelvic mesh **trial** against Boston Scientific and **in** a pending **trial** over the blood thinner Xarelto, he wrote.

He called Johnson & Johnson's arguments a case of "buyer's remorse," particularly since the last two verdicts have come from consolidated **trials**, a big reason why the awards were so large. Johnson & Johnson, he wrote, agreed to waive all venue concerns set forth by the U.S. Supreme Court's 1998 holding **in** *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*.

"Petitioners should not be permitted to rewrite history simply because they are dissatisfied with the outcomes of the last two bellwether **trials**," wrote Lanier, who has partnered with former U.S. Solicitor General Kenneth Starr **in** the [plaintiffs' response](#) filed on Monday to the writ petition. "Petitioners clearly consented to the district court's personal jurisdiction."

That's not true, wrote Beisner **in** a [reply](#) filed Thursday. He said Johnson & Johnson only consented to the first two bellwether **trials**, the first of which involved a single plaintiff.

"From the beginning, petitioners' position has been that true bellwether **trials** should involve individual plaintiffs, not consolidated **trials**, to avoid confusing juries and to generate reliable information regarding how juries perceive the strength of various claims and defenses," he wrote. "When it became clear that the MDL court intended to continue trying consolidated cases, petitioners decided to stop consenting to **trials**."

And that's why Beisner now insists that all the cases - not just those **in** California and New York - should be remanded because Kinkeade doesn't have its consent to hold **trials**, according to Johnson & Johnson's [response](#) to Lanier's remand request.

Beisner also gave an alternate motivation for why the plaintiffs are focused on remanding to just California and New York: Those states have uncapped punitive damages.

"Plaintiffs' proposal for selective remand for specific cases from California and New York is a blatant attempt to manipulate the MDL process for strategic advantage," Beisner wrote. "Simply put, plaintiffs are hoping to ring up large verdicts - regardless of whether they would survive appeal - **in** an effort to force a settlement unrelated to the merits of any of the cases **in** this litigation.

Contact Amanda Bronstad at abronstad@alm.com. On Twitter: [@abronstadlaw](https://twitter.com/abronstadlaw).

Classification

Language: ENGLISH

Publication-Type: Magazine

Subject: VERDICTS (90%); JURISDICTION (90%); LAW COURTS & TRIBUNALS (89%); JUDGES (89%); ORTHOPEDICS (78%); APPEALS (78%); APPELLATE DECISIONS (78%); LAWYERS (78%); MAJOR US LAW FIRMS (77%); DECISIONS & RULINGS (77%); LEGAL SERVICES (77%); APPEALS COURTS (77%); PETITIONS (77%); US STATE GOVERNMENT (73%); SURGERY & TRANSPLANTATION (73%); SENIOR CITIZENS (61%); PRODUCT LIABILITY (56%)

Company: JOHNSON & JOHNSON (95%); DEPUY ORTHOPAEDICS INC (91%); SKADDEN ARPS SLATE MEAGHER & FLOM LLP (84%); LANIER LAW FIRM PC (52%); BOSTON SCIENTIFIC CORP (50%)

Ticker: JNJ (NYSE) (95%); BSX (NYSE) (50%)

Industry: ORTHOPEDICS (78%); LAWYERS (78%); MAJOR US LAW FIRMS (77%); LEGAL SERVICES (77%); ANTICOAGULANTS (50%)

Geographic: NEW YORK, USA (93%); DISTRICT OF COLUMBIA, USA (79%); CALIFORNIA, USA (79%); UNITED STATES (93%)

Load-Date: August 18, 2017

Content Type: Legal News

Terms: J&J Urges halt to Hip implant trial in dallas

Narrow By: Sources: Texas Lawyer All Content Types: Legal News

Date and Time: Aug 18, 2017 10:11:37 a.m. EDT



[About LexisNexis®](#)

[Privacy Policy](#)

[Terms & Conditions](#)

[Sign Out](#)