UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION MDL No. 2272

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel[*] Zimmer defendants[1] (Zimmer) move under Panel Rule 7.1 to vacate our order conditionally transferring the Western District of Wisconsin action (*Sobottka*) listed on Schedule A to the Northern District of Illinois for inclusion in MDL No. 2272. The *Sobottka* plaintiff opposes the motion.

In his opposition, plaintiff argues that the action should be transferred even though it involves a Zimmer knee replacement component not identified in our centralization order – specifically, a NexGen Flex Articular Surface. *See In re: Zimmer NexGen Knee Implant Prods. Liab. Litig.*, 802 F. Supp. 2d 1374, 1376 (J.P.M.L. 2011) ("The subject actions share factual issues arising from allegations that Zimmer's 'high-flex' femoral components (*i.e.*, the Cruciate Retaining (CR) and Legacy Posterior Stabilized (LPS) components, and the 'Gender Solutions' versions thereof) and/or the MIS Tibial component . . . are prone to premature loosening, causing affected individuals pain and loss of movement, and often forcing them to undergo revision surgery.") (footnote omitted). Plaintiff contends that the MDL concerns, in fact, the entire NexGen Flex Knee System, that discovery in the MDL has and will pertain to the NexGen Flex Articular Surface, and that, in any event, the centralization order should not be read as foreclosing an expansion of the MDL to encompass a component related to the components specifically referenced in that order.

Based on past developments in this docket, we find plaintiff's arguments unpersuasive. Specifically, in August 2012, we transferred to this MDL, over Zimmer's objections, an Eastern District of Pennsylvania action (*Colbert*) involving the same component – the NexGen Flex Articular Surface – at issue in *Sobottka*. *See* Transfer Order (J.P.M.L. Aug. 3, 2012) (ECF No. 781). We did so because there were at least twelve other actions involving the component already in the MDL, and Zimmer was then arguing to the transferee judge, the Honorable Rebecca R. Pallmeyer, that those actions did not belong in the MDL. *See id*. at 1. In light of those circumstances, we concluded that Judge Pallmeyer was in the best position to determine whether the continued inclusion in the MDL of actions involving only the NexGen Flex Articular Surface would result in significant efficiencies. *See id*. at 2. The record shows that Judge Pallmeyer has now made that determination. In July of

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[*] Judge Lewis A. Kaplan took no part in the decision of this matter.

[1] Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Surgical, Inc., f/k/a Zimmer Orthopaedic Surgical Products, Inc.

last year, she suggested Section 1407 remand of *Colbert*, finding that the action did "not meet the criteria for inclusion in th[e] MDL." *See* Suggestion of Remand, at 1 (J.P.M.L. July 23, 2014) (ECF No. 1749). On July 31, 2014, *Colbert* was remanded to the Eastern District of Pennsylvania. *See* Finalized Conditional Remand Order (J.P.M.L. July 31, 2014) (ECF No. 1759). The record contains no indication that the *Sobottka* action is meaningfully different from *Colbert*. The Zimmer component at issue in both is the same, and the question of whether either should be included in the MDL is the same.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-289" is vacated as to the *Sobottka* action.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

IN RE: ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION MDL No. 2272

SCHEDULE A

Western District of Wisconsin

SOBOTTKA v. ZIMMER SURGICAL, INC., ET AL., C.A. No. 3:14-00800