

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ZIMMER NEXGEN KNEE IMPLANT
PRODUCTS LIABILITY LITIGATION**

MDL No. 2272

TRANSFER ORDER

Before the Panel: Plaintiff in the District of Vermont action (*Reynolds*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate our order conditionally transferring her action to the Northern District of Illinois for inclusion in MDL No. 2272. Responding Zimmer defendants¹ (Zimmer) oppose the motion.

In her motion to vacate, the *Reynolds* plaintiff contends that her case is primarily a medical malpractice action. A review of plaintiff's amended complaint does not bear that out. Indeed, she brings six of the seven counts against only the Zimmer defendants. The Panel routinely transfers actions involving claims against the principal defendant or defendants in the MDL and related claims against healthcare providers or similar entities.² See, e.g., *In re: Kugel Mesh Hernia Patch Prods. Liab. Litig.* 560 F. Supp. 2d 1364, 1364-65 & n.1 (J.P.M.L. 2008).

Plaintiff's argument that transfer is unnecessary because her counsel has made arrangements to obtain discovery in the MDL with one of plaintiffs' lead counsel in the MDL is unconvincing. Plaintiff cannot bypass the Federal Rules via a side agreement, to which Zimmer is not a party and does not consent.

After considering the argument of counsel, we find that the *Reynolds* action involves common questions of fact with actions previously transferred to MDL No. 2272, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions already in the MDL "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." See *In re: Zimmer NexGen Knee Implant Prods. Liab. Litig.*, 802 F. Supp. 2d 1374, 1376 (J.P.M.L. 2011) (footnote omitted). Here,

¹ Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Surgical, Inc.


² Plaintiff's argument that transfer will place employees of the hospital defendants that she has sued beyond the transferee court's subpoena power is unavailing. If the case is not resolved in the MDL, it will be remanded to the District of Vermont for trial. Transfer will not bar plaintiff from deposing those employees where they are located.

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like other plaintiffs already in the MDL, the *Reynolds* plaintiff plainly alleges that the NexGen components that she received – including a NexGen LPS Flex femoral component – are unsafe and prone to loosening.

IT IS THEREFORE ORDERED that the *Reynolds* action is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable Rebecca R. Pallmeyer for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance

Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

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SCHEDULE A

District of Vermont

REYNOLDS v. DARTMOUTH-HITCHCOCK MEDICAL CENTER., ET AL.,
C.A. No. 1:14-00137