

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

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

William Colbert, et al. v. Zimmer, Inc., et al.            )  
E.D. Pennsylvania, C.A. No. 2:12-01335            )

MDL No. 2272

**TRANSFER ORDER**

**Before the Panel:** Pursuant to Panel Rule 7.1, Zimmer defendants<sup>1</sup> (Zimmer) move to vacate our order conditionally transferring this action (*Colbert*) to the Northern District of Illinois for inclusion in MDL No. 2272. The *Colbert* plaintiffs oppose the motion.

In its motion to vacate, Zimmer argues that *Colbert* involves Zimmer knee replacement components outside the scope of the MDL as defined in our centralization order – specifically, a non-flex femoral component<sup>2</sup> and a NexGen flex articular surface. As Zimmer notes, our order identified the components then at issue as “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.” *In re: Zimmer NexGen Knee Implant Prods. Liab. Litig.*, 802 F. Supp. 2d 1374, 1376 (J.P.M.L. 2011) (footnote omitted).

Upon review of the record, however, and after considering all argument of counsel, we are persuaded that transfer of *Colbert* to the MDL is warranted. While we would likely be inclined to vacate with respect to an action involving just a non-flex femoral component, this action also involves a NexGen flex articular surface. According to that record, there are at least twelve actions already in the MDL involving NexGen flex articular surfaces.<sup>3</sup> Although Zimmer’s apparent position is that those actions do not belong in the MDL either, we believe that the transferee judge, the Honorable Rebecca R. Pallmeyer, is in the best position to make such a determination. *See In re Data Gen. Corp. Antitrust Litig.*, 510 F. Supp. 1220, 1226 (J.P.M.L. 1979) (describing the transferee judge as the “firsthand judicial observer,” and stating: “[S]ection 1407 contemplates that the degree and

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<sup>1</sup> Zimmer, Inc, Zimmer Holdings, Inc., and Zimmer Surgical, Inc.

<sup>2</sup> Zimmer states that the femoral component is the NexGen Legacy Posterior Stabilized Femoral Component.

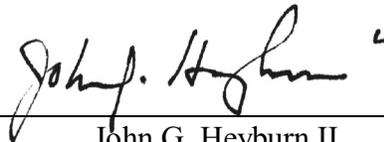
<sup>3</sup> *See* Zimmer’s Supplemental Response in Support of Its Motion for Suggestion of Remand, at 9 (N.D. Ill. July 6, 2012) (docket no. 537).

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manner of coordinated pretrial proceedings is left entirely to the discretion of the [transferee] judge.”); *see also In re: National Football League Players’ Concussion Injury Litig.*, 842 F. Supp. 2d 1378, 1379 (J.P.M.L. 2012) (“It is unclear at this juncture how closely related the claims against the Riddell defendants are to the claims against the NFL. It may be that the claims against the Riddell defendants are easily separable, but we are persuaded that the transferee judge is in the best position to determine whether those claims are sufficiently related to the NFL claims to remain in centralized proceedings.”). It may be, for example, that many of the same Zimmer personnel were involved in the development, design, manufacture, regulatory approval process, or marketing of not only the components identified in our centralization order but also the flex articular surface at issue in *Colbert*, and thus including the action in the MDL will result in significant efficiencies. On the other hand, Judge Pallmeyer may conclude that no such overlap exists, or that other reasons counsel against incorporating claims involving such components into the centralized proceedings.<sup>4</sup> As transferee judge, she has been presiding over this litigation since last August, and thus is in a better position than the Panel to make such an assessment. *See In re Data Gen. Corp.*, 510 F. Supp. at 1226.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this 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




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John G. Heyburn II  
Chairman

Kathryn H. Vratil  
Barbara S. Jones  
Marjorie O. Rendell

W. Royal Furgeson, Jr.  
Paul J. Barbadoro  
Charles R. Breyer

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<sup>4</sup> If she so concludes, she should issue a suggestion of remand to the Panel in accordance with Panel Rule 10.1(b).