

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY LITIGATION**

David Foscue, et al. v. Zimmer, Inc., et al.,)
W.D. Arkansas, C.A. No. 1:12-01083)

MDL No. 2158

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in this action move to vacate our order conditionally transferring the action (*Foscue*) to the District of New Jersey for inclusion in MDL No. 2158. Responding defendants Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer US, Inc. (collectively Zimmer) oppose the motion.

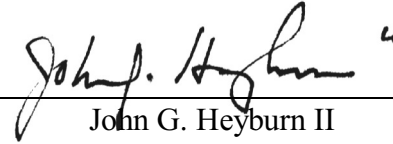
In opposing transfer, plaintiffs cite the pendency of their motion for remand to state court. As we have frequently held, however, the pendency of such a motion generally is not a sufficient reason to delay transfer. Under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand or other motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so. We further note that the record indicates that the transferee court has expeditiously ruled on other remand motions in this docket. *See Ruz v. Zimmer Inc.*, No. 2:10-06087 (D.N.J. July 26, 2011) (docket no. 54) (order adopting magistrate’s report and recommendation on plaintiff’s remand motion).

After considering all argument of counsel, we find that *Foscue* involves common questions of fact with actions in this litigation previously transferred to MDL No. 2158, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our original order directing centralization. In that order, we held that the District of New Jersey was an appropriate Section 1407 forum for actions “shar[ing] factual issues as to whether Zimmer’s Durom Acetabular Component (or Durom Cup), a device used in hip replacement surgery, was defectively designed and/or manufactured, and whether Zimmer failed to provide adequate warnings concerning the device.” *See In re: Zimmer Durom Hip Cup Prods. Liab. Litig.*, 717 F. Supp. 2d 1376, 1377 (J.P.M.L. 2010). Similar to plaintiffs in other actions previously transferred to the MDL, the *Foscue* plaintiffs allege that despite having knowledge of serious injuries associated with use of the Durom Cup, as well as numerous failures of the device, Zimmer “engaged in a marketing, advertising and promotional program, which . . . falsely and deceptively created the impression that the use of the Durom Cup was safe.” First Am. Compl. ¶ 18.

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IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Susan D. Wigenton for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written above a horizontal line.

John G. Heyburn II
Chairman

Kathryn H. Vratil
Paul J. Barbadoro
Charles R. Breyer

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan