

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 action (*Ghezzi*) 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 opposing transfer, the *Ghezzi* plaintiff cites the pendency of her remand motion. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as a plaintiff can present those issues to the transferee judge.² See, e.g., *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiff also contends that her case implicates unique issues concerning the compatibility of the Zimmer knee replacement components that she received, and that, unlike the actions already in the MDL, her case does not involve issues concerning the loosening of those components. Plaintiff's own complaint refutes that contention. In that pleading, plaintiff plainly alleges that Zimmer was negligent because, *inter alia*, it "knew or should have known that the implant had a propensity to cause serious injury, including loosening, bone loss, decreased range of motion, diminished mobility, pain, instability, and/or revision surgery," and that it failed to warn plaintiff "regarding the risk of serious injury, pain, instability, loosening, and revision surgery." Compl. at p. 7 (underscoring added). In her fraud claim, plaintiff asserts that if she had been given such warnings, she would not have agreed to have surgery using the subject components. See *id.* at p. 6. Although plaintiff does make certain allegations concerning the compatibility of the Zimmer components, Section 1407 does not require a complete identity or even a majority of common factual

¹ Zimmer Holdings, Inc., Zimmer, Inc., Zimmer US, Inc., and Joe Bisant.

² Moreover, 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 motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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issues as a prerequisite to transfer.³ See, e.g., *In re: In re Park West Galleries, Inc., Litig.*, 887 F. Supp. 2d 1385, 1385 (J.P.M.L. 2012).

Finally, plaintiff argues that she would be inconvenienced by transfer. This argument is not convincing, because in considering issues of transfer, we look to “the overall convenience of the parties and witnesses, not just [that] of a single plaintiff or defendant in isolation.” See *In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012). Furthermore, because Section 1407 transfer is for pretrial proceedings only, there is usually no need for a party to travel to the transferee district. See *In re: MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003).

After considering the argument of counsel, we find that the *Ghezzi* 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, like other plaintiffs already in the MDL, the *Ghezzi* plaintiff plainly alleges that the NexGen components that she received – including a NexGen CR-Flex Gender Solutions femoral component – were not safe and effective, were prone to loosening, and caused her to suffer various injuries, including the need for revision surgery.

IT IS THEREFORE ORDERED that the *Ghezzi* 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



Sarah S. Vance
Chair

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

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

³ Should the transferee judge determine, at some point following transfer, that continued inclusion of the *Ghezzi* action in the centralized proceedings is no longer warranted, we encourage her to suggest Section 1407 remand. See Panel Rule 10.1(b).

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SCHEDULE A

Southern District of California

GHEZZI v. ZIMMER HOLDINGS, INC., ET AL., C.A. No. 3:15-00106