BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: STRYKER REJUVENATE AND ABG II HIP IMPLANT PRODUCTS LIABILITY LITIGATION	**MDL No. _____**

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407.

ORAL ARGUMENT REQUESTED

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Robert Davis ("Moving Party") brings this motion to transfer all cases that arise out of the Stryker Rejuvenate and ABG II modular-neck stem hip implant systems to the District of Minnesota.

In 2008, Defendants[1] introduced the Rejuvenate and ABG II modular-neck stems to the market for patients requiring primary total hip arthroplasty. Within four years, Defendants had produced nearly 53,000 Rejuvenate and ABG II modular-neck stem units[2], believed to have been implanted in many thousands of patients. On July 6, 2012, Defendants issued a press release voluntarily recalling its Rejuvenate and ABG II modular-neck stems, citing post-market

[1] "Defendants" refers to all parties that have been named as a defendant in the currently filed federal actions, including: Howmedica Osteonics Corporation d/b/a Stryker Orthopaedics, Stryker Corporation, Stryker Sales Corporation, Stryker Sustainability Solutions, Inc., Stryker Howmedica Osteonics, American Medical Products, American Medical Products, Inc., Orthopedic Solutions, Inc d/b/a Stryker South Florida Agency, Orthopedic Implant Professionals agent of Stryker South Florida, Orthopedic Implant Consultants, Inc., and South Florida Learning Center, LCC.

[2] See http://www.accessdata.fda.gov/scripts/enforcement/enforce_rpt-Event-Detail.cfm?action=detail&id=62456&w=08012012&lang=eng

surveillance data indicating a trend of device failures.[3] Defendants' problems continued to escalate following the July recall. In January of 2013, Defendants sent an "Urgent Update Product Recall" letter to all affected customers that contained updated corrective actions for patients, including recommendations for regular, repetitive testing even for those patients not yet experiencing symptoms of device failure.[4] There are currently thousands of patients across the United States who have been implanted with defective, recalled Rejuvenate and/or ABG II modular-neck stem products who now find themselves at risk of premature medical device failure and severe medical complications.

Moving Party is aware of thirty such cases that have been filed in twelve different federal district courts. With potentially thousands of patients across the country impacted by these recalls, it is inevitable that many more patients implanted with a Rejuvenate and/or ABG II modular-neck stem will turn to the federal court system to seek redress. Moving Party respectfully submits that the Rejuvenate and ABG II modular-neck stem cases will most efficiently be managed through a multi-district litigation. Furthermore, Howmedica's home state of New Jersey, has formally designated Multicounty Litigation for the Rejuvenate and ABG II modular-neck stems.[5]

The Judicial Panel on Multidistrict Litigation (the "Panel") has previously granted motions to transfer cases arising out of defective hip implant systems causing similar injuries. See *In re: Zimmer Durom Hip Cup Products Liability Litigation* (MDL No. 2158); *In Re: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation* (MDL No. 2197); *In Re:*

[3] http://www.fda.gov/Safety/Recalls/ucm311043.html
[4] http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfres/res.cfm?id=110699; http://www.swissmedic.ch/recalllists_dl/07181/Vk_20120507_01-e4.pdf
[5] http://www.judiciary.state.nj.us/notices/2013/n130130a.pdf

DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation (MDL No. 2244); *In re: Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation* (MDL 2329); and *In Re: Biomet M2a Magnum Hip Implant Products Liability Litigation* (MDL No. 2391). The Rejuvenate and ABG II modular-neck stem cases are the next products liability litigation involving a hip replacement system that will benefit from coordinated or consolidated pretrial proceedings through a multi-district litigation.

To promote judicial efficiency and ensure that the Rejuvenate and ABG II modular-neck stem cases benefit from cost savings accomplished by coordinated or consolidated pretrial proceedings, Moving Party respectfully submits this Brief in Support of Plaintiff's Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407.

II. FACTUAL BACKGROUND

Total hip replacement surgery consists of implanting a prosthetic hip replacement system to replace the femoral head (ball) and acetabulum (socket) of the human anatomy. During hip replacement surgery, the acetabulum is traditionally replaced with a prosthetic cup consisting of two or more components. In addition, the femoral head is replaced with a prosthetic ball that is supported by a stem inserted into the femoral bone. It is estimated that more than 285,000 hip replacement surgeries are performed annually in the United States.

Given previous Petitions, the Panel is likely familiar with recent failures of metal-on-metal hip replacement systems.[6] The metal-on-metal hips previously before this Panel dealt

[6] See *In re: Zimmer Durom Hip Cup Products Liability Litigation*, (MDL No. 2158); *In Re: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation*, (MDL No. 2197)*; In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation* (MDL No. 2244); *In re: Wright Medical Technology, Inc., Conserve Hip Implant Products Liability*

primarily with problems generally resulting from articulation between the ball and socket components of the hip replacement systems. The Rejuvenate and ABG II modular-neck stems are slightly different from the hip systems previously before the Panel. The Rejuvenate and ABG II systems are dual modular-neck hip stems comprised of two basic components: (1) a chromium-cobalt neck that is inserted into a (2) titanium femoral stem. Because the Rejuvenate and ABG II modular-neck stems do not contain an acetabulum component, they must be used in conjunction with the acetabular component from a separate system(s).

By way of very high level, general background, the defect with the Rejuvenate and ABG II modular-neck stems, and, ultimately, the cause of the Class II recalls, involves fretting and/or corrosion at the junction of the femoral neck and stem.[7] Although fretting and/or corrosion occurs at a separate area than the other metal-on-metal hips previously considered by this Panel, the adverse outcomes are largely identical: metallosis (a build-up of metallic debris), necrosis (the cell death of affected tissues), and osteolysis (the death of bone cell due to blood supply issues). Like the failures of the other metal-on-metal devices, the failure of the Rejuvenate and ABG II modular-neck stems regularly require an invasive revision surgery to remove and replace the defective hip replacement system. Unlike the other metal-on-metal devices, the failure of the Rejuvenate and ABG II modular-neck stems requires the extremely invasive and technically difficult surgical removal of the femoral stem, rather than simply replacing the bearing surfaces.

On April 23, 2012, less than four years after introducing the devices to the market, Defendants issued an "Urgent Product Correction" letter for the Rejuvenate and ABG II

Litigation (MDL No. 2329); and In Re: *Biomet M2a Magnum Hip Implant Products Liability Litigation* (MDL No. 2391).

[7] http://www.stryker.com/en-us/products/Orthopaedics/modularneckstems/index.htm

modular-neck stems. The April 23, 2012 letter reported that Defendants had updated the Instructions for Use ("IFU") for the Rejuvenate and ABG II modular-neck stems to reflect that fretting and/or corrosion at or about the modular neck junction causes metal ion generation in the surrounding joint space.[8] Then, on July 6, 2012, Defendants issued a Press Release voluntarily recalling the Rejuvenate and ABG II modular-neck stems, effectively removing the devices from the market and terminating global distribution.[9] On July 26, 2012, just over four years after first receiving clearance through the FDA's 510K process, the FDA classified Defendants' actions as a Class II Recall affecting nearly 53,000 Rejuvenate and ABG II modular-neck stem units[10], believed to have been implanted in many thousands of patients.

Defendants' initial response in the April 26, 2012 letter was to downplay the significance of adverse outcomes - stating that revision surgeries were only necessary in less than one percent of the patients. That posture has since changed significantly. On January 2, 2013, Defendants issued an "Urgent Update Product Recall" letter to all affected customers, encouraging surgeons to perform clinical examinations, including blood work, for all patients who received a Rejuvenate or ABG II modular-neck stem.[11] The January 2, 2013 letter encouraged examinations and testing even if the patient is thus far asymptomatic. Furthermore, Defendants instructed surgeons to conduct follow-up examinations at regular intervals, even in the event that initial findings appear normal.[12]

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[8] See http://www.swissmedic.ch/recalllists_dl/07178/Vk_20120507_01-e1.pdf
[9] See http://www.fda.gov/Safety/Recalls/ucm311043.htm
[10] See http://www.accessdata.fda.gov/scripts/enforcement/enforce_rpt-Event-Detail.cfm?action=detail&id=62456&w=08012012&lang=eng
[11] http://www.swissmedic.ch/recalllists_dl/07181/Vk_20120507_01-e4.pdf
[12] See http://www.aboutstryker.com/modularneckstems/

Not surprisingly, many of the patients implanted with a Rejuvenate or ABG II modular-neck stem have required revision surgery and subsequently filed lawsuits in federal court, including Moving Party. As of the filing of this Motion, Moving Party is aware of thirty cases filed in twelve different federal courts across the nation. In their complaints, Plaintiffs allege causes of action including, but not limited to: negligence, breach of express and implied warranties, strict product liability (failure to warn; design defect; manufacturing defect), consumer fraud claims, and loss of consortium.

Moving Party alleges in his Complaint, among other things, that the Rejuvenate and ABG II modular-neck stems are defective because they were improperly designed and manufactured and Defendants failed to include an appropriate warning with the devices. Furthermore, Moving Party also alleges that Defendants had knowledge, or should have had knowledge, of the alleged defects and dangers known with respect to the materials used in the recalled products, citing to medical reports and journals dated back to the 1980s. As a result of Defendants' defective products, Moving Party was implanted with bi-lateral Rejuvenate modular-neck stems that failed, causing Moving Party to undergo painful, complicated revision surgery to remove the defective hip replacement systems. Moving Party alleges he has suffered from physical injuries, pain, suffering, emotional distress, and economic damages as a result of Defendants' Rejuvenate modular-neck stem. Plaintiffs across the country have alleged similar causes of action, factual support, and resulting damages. For example, each of the plaintiffs allege that he or she had a Rejuvenate and/or ABG II modular-neck stem implanted in his or her body, and that the Rejuvenate or ABG II modular-neck stem failed and caused the plaintiffs' injuries and damages.

Moving Party anticipates that the number of currently filed cases is just the beginning of a sizeable litigation. Since the recall, the number of adverse events reported to the FDA has increased tremendously. Defendants' evolving recommendations to both surgeons and patients implanted with these devices evidence a growing concern about the device's failure rate. Moving Party expects that numerous cases will continue to be filed in federal districts across the nation moving forward.

Like the other hip replacement MDLs, the Rejuvenate and ABG II modular-neck stem cases will benefit from coordinated or consolidated pre-trial proceedings. As outlined below, these cases involve several common issues of fact that should be resolved by one judge. Accordingly, Moving Party respectfully requests that the Panel transfer the Rejuvenate and ABG II modular-neck stem cases pursuant to 28 U.S.C. § 1407 to the District of Minnesota.

III. ARGUMENT

A. TRANSFER AND COORDINATION OF THE REJUVENATE AND ABG II MODULAR-NECK STEM CASES IS APPROPRIATE AND NECESSARY

28 U.S.C. § 1407 directs the Panel to transfer federal civil actions for pretrial coordination or consolidation where: (1) the cases involve "common questions of fact" (2) the transfer is convenient for the parties and witnesses; and (3) the transfer "promote[s] the just and efficient conduct" of the cases. 28 U.S.C. § 1407(a). Generally speaking, the purpose of Section 1407 is "to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation costs, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." Manual for Complex Litigation (Fourth) § 20.131 (2004) (citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968)); *see also* David F. Herr, Multidistrict Litigation Manual § 5:16 (2010).

The Rejuvenate and ABG II modular-neck stem cases are well suited for centralization under Section 1407. Though scattered across the country, these cases are closely related: they share common defendants, the same basic theories of liability, and the same basic factual allegations. All of the cases will involve the same core of lay and expert witness and document discovery. Moreover, few, if any, of these cases have made any substantial progress toward trial, making this the optimal time to order transfer. Transferring these cases pursuant to 28 U.S.C. § 1407 would enhance the convenience and efficiency of this litigation. Failing to transfer would almost certainly lead to inconsistent and conflicting rulings – particularly with respect to discovery and other pretrial matters. As set forth in detail below, the Rejuvenate and ABG II modular-neck stem cases are suitable for transfer and centralization before a single district court.

i. The Rejuvenate and ABG II modular-neck stem cases involve common questions of fact and involve common issues for discovery.

Federal civil actions are eligible for transfer pursuant to 28 U.S.C. § 1407 if they involve "common questions of fact" subject to discovery. *See* 28 U.S.C. § 1407(a); *In re Kugel Mesh Hernia Patch Products Liability Litigation*, 493 F. Supp. 2d 1371, 1372-73 (J.P.M.L. 2007). That requirement is plainly met here. The Rejuvenate and ABG II modular-neck stem cases currently pending, and, ultimately future filings, share countless issues of fact, including:

(1) Whether and to what extent the Rejuvenate and ABG II modular-neck stems have caused, or will cause, harmful effects in patients who received these devices including, but not limited to, physical injury, pain and suffering, swelling, severe inflammation of surrounding tissue and bone, metallosis, toxic levels of cobalt and chromium metal, an inability to walk and other lack of mobility, the need for revision surgery to remove the defective Rejuvenate and

ABG II modular-neck stems with the attendant risks of complications from surgery, and future prognosis for patients subjected to this technically difficult and painful surgery;

(2) When Defendants first learned of the connection between the Rejuvenate and ABG II modular-neck stem and the foregoing harmful effects caused by the devices;

(3) Whether, and for how long, Defendants concealed any such knowledge from physicians that purchased the devices for surgical implantation in their patients and the public;

(4) Whether Defendants defectively designed and/or manufactured the Rejuvenate and ABG II modular-neck stems;

(5) Whether Defendants failed to provide adequate warnings and instruction concerning the Rejuvenate and ABG II modular-neck stems;

(6) Whether Defendants were negligent in their design and/or manufacture of the Rejuvenate and ABG II modular-neck stems;

(7) Whether Defendants engaged in fraudulent and illegal marketing practices including, but not limited to, making unsubstantiated claims regarding the superiority and effectiveness of the Rejuvenate and ABG II modular-neck stems; and

(8) The nature and extent of past and future damages suffered by Plaintiffs as a result of the Rejuvenate and ABG II modular-neck stems.

Accordingly, the thirty cases currently filed before twelve federal district courts across the nation, as well as anticipated future cases, share numerous common questions of fact subject to discovery.

Transferring the Rejuvenate and ABG II modular-neck stem cases pursuant to § 1407 will permit the transferee court to manage discovery justly and efficiently; eliminate costly and

timely duplicative discovery; and avoid conflicting rulings on issues like the scope, timing, and form of discovery. *See, e.g., In re M3Power Razor System Marketing & Sales Practices Litigation*, 398 F. Supp. 2d 1363, 1364-65 (J.P.M.L. 2005) ("Transfer under Section 1407 will offer the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate discovery needs while ensuring that the common party and witnesses are not subjected to discovery demands that duplicate activity that will or has occurred in other actions."). Coordination of discovery will likely be beneficial not only for Plaintiffs, but also Defendants. If consolidated, depositions of key witnesses will only be required once rather than dozens of separate occasions. Documents can be produced once to a central location with access to all Plaintiffs and their counsel, therefore limiting duplicative discovery efforts as to the common factual issues between the cases. Thus, centralization is necessary to prevent duplicative discovery, lower the overall costs of discovery for all parties, and avoid unnecessary burdens on witnesses.

ii. Pretrial centralization of the Rejuvenate and ABG II modular-neck stem cases will enhance the convenience of the litigation as a whole.

Transfer is also appropriate when it enhances the convenience of the litigation as a whole. *See, e.g., In re Library Editions of Children's Books*, 297 F. Supp. 385, 386 (J.P.M.L. 1968) ("[T]he Panel must weigh the interests of all the plaintiffs and all the defendants, and must consider multiple litigation as a whole in the light of the purposes of the law."). Here, pretrial transfer would undoubtedly ease the burdens on all parties involved.

Defendants and Plaintiffs both benefit from pretrial centralization. Pretrial centralization would reduce discovery requests and costs significantly for Defendants. It also permits Plaintiffs' counsel to coordinate their efforts and share the pretrial workload, thereby reducing

each individual counsel and plaintiff's costs, and allowing Defendant to work with one consolidated set of discovery requests and filings, rather than negotiating with various counsel and courts across the country. Without centralization, Defendants will be forced to hire counsel in multiple districts nationwide, responding to similar but invariably slightly different discovery requests and pretrial litigation strategies. Pretrial centralization will also allow Defendants to concentrate their attention and energy on one forum, allowing Defendants to respond more quickly and effectively to plaintiffs and the transferee court, enhancing the overall efficiency of the litigation. *See, e.g.*, *In re Baldwin-United Corp. Litigation*, 581 F. Supp. 739, 741 (J.P.M.L. 1984) ("[P]rudent counsel will combine their forces and apportion the workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of inconvenience to all concerned.").

Finally, centralization will conserve financial and time resources of the courts; one judge, rather than many, will consider issues related to discovery, privilege, expert witnesses, qualifications and opinions, along with other essential issues. This certainly serves to enhance convenience to the federal court system as a while.

In short, transferring the Rejuvenate and ABG II modular-neck stem cases for pretrial coordination or consolidation will make this litigation far more efficient and convenient for all involved.

iii. Pretrial centralization of the Rejuvenate and ABG II modular-neck stem cases will promote the just and efficient conduct of these cases.

Centralization of the Rejuvenate and ABG II modular-neck stem cases will also promote the just and efficient conduct of this litigation. In evaluating whether proposed pretrial transfers serve this goal, the Panel often asks whether centralization will prevent inconsistent or repetitive

pretrial rulings. *See, e.g.*, *In re Baycol Products Liability Litigation*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) (centralization would promote justice and efficiency because it would "eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary"). For litigation of this magnitude and scope, centralization before a single court eliminates the possibility of inconsistent rulings amongst the Rejuvenate and ABG II modular-neck stem cases; therefore, preventing different treatment of Plaintiffs under similar legal theories.

Centralization will ensure just application of law for all Plaintiffs. All Plaintiffs will proceed under the same rulings and avoid conflicting decisions that may benefit one Plaintiff in one court over another, potentially resulting in forum shopping. Because every Rejuvenate and ABG II modular-neck stem case sets forth the same basic liability allegations, Defendants likely will assert the same defenses to the allegations of each complaint. With thirty Rejuvenate and ABG II modular-neck stem cases currently filed, and hundreds more expected to surface in the near future, it is imperative that there not be conflicting rulings from various courts around the country. Indeed, a single transferee court will be in the best position to determine the appropriate staging and resolution of such threshold issues that affect all actions and that could dramatically simplify the litigation. *See In re Suess Patent Infringement Litigation*, 331 F. Supp. 549, 550 (J.P.M.L. 1971).

Thus, under the authority granted to it by 28 U.S.C. § 1407, the Panel should grant the Motion for transfer and consolidation of the Rejuvenate and ABG II modular-neck stem cases. Therefore, the remaining issue presented to the Panel is to determine the proper venue for the transferred actions.

B. THE DISTRICT OF MINNESOTA IS THE PREEMINENT TRANSFEREE FORUM TO EFFICIENTLY MANAGE THE REJUVENATE AND ABG II MODULAR-NECK STEM CASES

Moving Party respectfully urges the Panel to transfer the Rejuvenate and ABG II modular-neck stem actions to the District of Minnesota where they can be efficiently, justly and capably managed by a court with extensive multidistrict litigation experience, particularly in the area of products liability medical device cases. The District of Minnesota is optimally situated, experienced, and uniquely capable of effectively managing a complex litigation like the proposed MDL here.

In determining an appropriate transferee forum, the Panel balances a number of factors, including: the experience, skill and caseloads of the available judges; number of cases pending in the jurisdiction; convenience of the parties; location of the witnesses and evidence; and the minimization of cost and inconvenience to the parties. *See, e.g., In re Regents of University of California*, 964 F.2d 1128, 1136 (Fed. Cir. 1992); *In re Wheat Farmers Antitrust Class Action Litig.*, 366 F.Supp. 1087, 1088 (J.P.M.L. 1973); *In re Preferential Drugs Prods. Pricing Antitrust Litig.*, 429 F.Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig.*, 206 F.Supp. 1376, 1378 (J.P.M.L. 2002); Annotated Manual of Complex Litigation (Fourth) (2010), §20.131, at 303-304. Of the factors the Panel considers when determining the transferee forum, experience, number of pending cases, and available resources weigh heavily in favor of transferring all related cases to the District of Minnesota.

The District of Minnesota is well-versed in handling multidistrict litigations and specifically, handling medical device products liability cases. The District of Minnesota has brought about successful resolution in several medical device multidistrict litigations including:

In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation, MDL No. 1708, *In Re: Medtronic Inc., Sprint Fidelis Leads Products Liability Litigation,* MDL No. 1905, *In Re: St. Jude Medical Inc., Silzone Heart Valves Products Liability Litigation,* MDL. No. 1396, and *In Re: Medtronic, Inc. Implantable Defibrillators Products Liability Litigation,* MDL No. 1726. Furthermore, the District of Minnesota's bench and staff have extensive experience in overseeing multiple complex MDL proceedings involving other complicated medical issues, including: *In Re: Levaquin Products Liability Litigation,* MDL No. 1943, *In Re: Baycol Products Liability Litigation,* MDL No. 1431, and *In Re: Mirapex Products Liability Litigation,* MDL No. 1836. Each of these MDLs previously assigned to the District of Minnesota have been resolved or are in the process of resolving.[13] The District of Minnesota currently has the capacity and interest to handle an MDL of this magnitude. The District of Minnesota's copious knowledge, background, and experience will undoubtedly ensure that this litigation will proceed in a timely and efficient manner.

Currently, ten of the thirty Rejuvenate and ABG II modular-neck stem cases are filed in the District of Minnesota.[14] The number of cases currently pending in a given District is an appropriate factor in determining where to assign a new MDL. *See* David F. Hen, Multidistrict

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[13] *In Re: Levaquin Products Liability Litigation* is the only active MDL in the District of Minnesota with more than 15 pending cases. However, the parties in *Levaquin* have announced settlement is underway.

[14] *Helder et al. v. Howmedica Osteonics Corporation,* 13-cv-0156*; Heitland et al. v. Howmedica Osteonics Corporation,* 13-cv-0168*; Mathiasen et al. v. Howmedica Osteonics Corporation,* 13-cv-0170*; Towler et al v. Howmedica Osteonics Corporation,* 13-cv-0171*; Bergman et al v. Howmedica Osteonics Corporation, 13-cv-0216; Brennan et al. v. Howmedica Osteonics Corporation,* 13-cv-0217*; Davis v. Howmedica Osteonics Corporation,* 13-cv-0235*; Gjerde v. Howmedica Osteonics Corporation,* 13-cv-0236; *Orndorff et al. v. Howmedica Osteonics Corporation et al,* 13-cv-0329; and *Wayne Berg et al. v. Howmedica Osteonics Corporatio*n, 13-cv-0388.

Litigation Manual § 6:8 (2010) ("[T]he Panel will not normally transfer actions to a district in which no action is then pending and the panel clearly considers the number of actions pending in various districts to determine the selection."). The remaining twenty cases not before the District of Minnesota are spread across eleven different District Courts with no Court presiding over more than five Rejuvenate or ABG II modular-neck stem cases.

Finally, the Minneapolis/St. Paul area offers a convenient and affordable location for Defendants and Plaintiffs. The Minneapolis-St. Paul International Airport is a central hub for multiple airlines, providing direct flights throughout the day to destinations across the U.S. As a major metropolitan area, Minneapolis-St. Paul has adequate hotel rooms, within easy walking distance of the courthouse. In addition, the District of Minnesota is a geographically centralized location for the Defendants, Plaintiffs, and a comprehensive group of surgeons and experts that will be involved in this complicated litigation.

The Panel in the past has recognized that the District of Minnesota is an appropriate MDL transferee court because the district "enjoys general caseload conditions' and resources allowing it to handle complex litigations. *In re St. Jude Medical, Inc., Silzone Heart Valves Prods. Liab. Litig.*, 2001 U.S. Dist. LEXIS 5226, at *4-5 (J.P.M.L. 2001). Furthermore, in transferring the *Baycol* MDL to the District of Minnesota, the Panel found that the District is "a major metropolitan court that i) is centrally located, ii) is not currently overtaxed with other multidistrict dockets, and iii) possesses the necessary resources, facilities, and technology to sure-handedly devote the substantial time and effort to pretrial matters that this complex docket is likely to require." *In re Baycol*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001).

While there are a number of eminently qualified judges serving in the District of Minnesota, if transferred to the District of Minnesota, Moving Party respectfully requests that the litigation be assigned to the Honorable Donovan W. Frank, who currently presides over two of the Rejuvenate modular-neck stem cases now pending in the District of Minnesota. Judge Frank has more than twenty-five years of experience as a jurist, including nearly fifteen years of experience as a federal judge. Before his appointment to the District of Minnesota in 1998, Judge Frank served on the Minnesota state district court bench, including service as the Chief Judge of the sixteen-judge Sixth Judicial District form 1991 to 1996. Prior to his judicial appointments, Judge Frank served as an Assistant County Attorney in Minnesota.

Judge Frank's comprehensive experience, including presiding over complex products liability cases, makes him a superior choice to oversee the Rejuvenate and ABG II modular-neck stem MDL. Specifically, Judge Frank's experience includes presiding over the *In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation,* MDL No. 1708, which involved multiple medical products combined into one MDL, and many complex disputes concerning science and discovery. Judge Frank guided the parties to a global resolution of thousands of *Guidant* cases. The *Guidant* MDL recently concluded, clearing room on Judge Frank's docket for another complex MDL involving medical devices. Judge Franks' experience, and that of his Chambers, will undoubtedly ensure an efficient MDL here.

Furthermore, Judge Frank is continually recognized, both locally and nationally, for his commitment to the right to a fair legal process. Most recently, the American Bar Association ("ABA") Commission on Disability Rights selected Judge Frank to receive the 2012 Paul G. Hearne Award for Disability Rights. The ABA selected Judge Frank citing his focus on

"advocating for the rights of persons with developmental disabilities – 'the forgotten minority' – to equal opportunities, equal justice under the law, and equal access, and to be treated with dignity and respect."[15],[16]

Accordingly, Moving Party respectfully requests the Panel transfer these cases to the District of Minnesota with the Honorable Donovan W. Frank assigned to preside.

III. CONCLUSION

For the aforementioned reasons, Moving Party respectfully requests that the Panel order coordinated or consolidated pretrial proceedings for the Rejuvenate and ABG II modular-neck stem cases and transfer all pending and future cases to the District of Minnesota, with the Honorable Donovan W. Frank presiding.

[15] http://www.fedbar.org/Chapters/Minnesota-Chapter/Minnesota-Federal-Judge-Receives-Paul-G-Hearn-Award-from-ABA.aspx

[16] Other distinguished honors and awards include: Federal Bar Association - Elaine R. "Boots" Fisher Award (2006), in recognition of outstanding public service and dedication to diversity in the legal community; Hamline University School of Law Distinguished Alumnus Award (2000); Minnesota Trial Judge of the Year, Conference of Chief Judges (1996); Range Women's Advocates Annual Recognition Award (1995), in recognition of contributions toward ending domestic violence; Alumni Association Distinguished Achievement Award, Hamline University School of Law (1986).

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Respectfully Submitted,

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