

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE
IMPLANT PRODUCTS LIABILITY
LITIGATION

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) MDL No. 2272
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This Document Relates to All Cases

Master Docket Case No. 11 C 05468

Judge Rebecca R. Pallmeyer

ORDER

In a number of cases, attorneys who filed appearances for individual Plaintiffs have filed motions for leave to withdraw. Though Plaintiffs are correct that the number of cases involved “represent[s] a mere fraction of cases in this MDL,” (Plaintiffs’ Reply [894] at 2), the fact remains that, if these motions are granted, this large and complicated MDL proceeding will include dozens of *pro se* Plaintiffs, most of whom are not in this jurisdiction and have no convenient or effective way of participating in discovery, negotiations, or court proceedings. For reasons explained in open court, the court is unwilling to grant these motions in their current form.

Most significantly, counsel have not offered any concrete or specific grounds for withdrawal. Counsel asserts, without specifics, that there has been a “breakdown in the attorney-client relationship” and “disagreement in the handling” of the litigation. (*Id.* at 4.) Respectfully, disagreement about the handling of a case is not unprecedented and does not require the court to approve withdrawal. Counsel has not suggested that the reported disagreement has resulted in the clients’ refusal to cooperate or failure to communicate with their lawyers, for example. Nor has counsel intimated that the clients have demanded that counsel violate ethical standards, or that further representation of these clients would create a conflict of interest not detectable at the outset of the attorney-client relationship. At oral argument on these motions, Attorney Oliver puzzlingly asserted that the cases in question are “not appropriate for this MDL” because the individual cases

present causation issues that differ from the bulk of the other cases. Yet each of the Plaintiffs in question adopted the long form complaint and filed a short form complaint, as well. Plaintiffs' counsel have never asked the court for a suggestion of remand for these cases. For their part, Defendants steadfastly insist that the cases in question do fall squarely within the definition of cases that belong in this proceeding.

In addition to considering the reasons for which withdrawal is sought, the court is sensitive to other concerns, including the prejudice that may result to other litigants; harm to the administration of justice; and potential delay. Plaintiffs' counsel asserts that allowing withdrawal will have "little effect on the MDL as a whole," (*id.*), but again the court disagrees. Individuals untrained in the law cannot participate meaningfully in this case, which involves literally millions of documents and the depositions of many technical and engineering witnesses, as well as medical testimony. Even if individual Plaintiffs were able to finance this litigation on their own and engage in the necessary preparation and travel, the involvement of dozens of non-lawyers in the discovery process would overwhelm that process and obviously defeat any economies achieved by the MDL mechanism. Service of filings on individual non e-filers alone would generate extraordinary expense for counsel and for the court. Remand of dozens of cases (assuming that were appropriate) would defeat the purpose, as well; indeed, this MDL has already been complicated by the entry of an inconsistent discovery schedule in another jurisdiction. Sending dozens of cases back to their home districts at this stage would multiply that problem. The court disagrees, further, with counsel's contention that a stay or delay of the case while they seek consent from the clients will not have a significant effect on the timetable. The fact that counsel have not obtained that consent already suggests that communication and reaching agreement with the clients is not a straightforward process.

On this record, motions for leave to withdraw, without the simultaneous appearance of substitute counsel, must be denied. In addition, the court notes that in a handful of instances, a

motion for leave to withdraw has been followed by a motion for dismissal of the case with prejudice. For obvious reasons, without an affirmative communication from the individual Plaintiff that dismissal is acceptable, the court declines to dismiss a case on motion filed by a lawyer who has simultaneously asserted a “breakdown” in the attorney/client relationship.

ENTER:

A handwritten signature in black ink, appearing to read "Rebecca R. Pallmeyer", written in a cursive style. The signature is positioned above a horizontal line.

Dated: June 25, 2013

REBECCA R. PALLMEYER
United States District Judge