

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE)	
IMPLANT PRODUCTS LIABILITY)	MDL NO. 2272
LITIGATION)	
)	
This Document Relates to All Cases)	Master Docket Case No. 1:11-cv-05468
)	
)	Honorable Rebecca Pallmeyer

CASE MANAGEMENT ORDER NO. 8

The court orders the parties as follows:

1. Plaintiffs shall submit, as a supplement to the Plaintiffs' Fact Sheet, a medical record which evidences the loosening¹ of: (1) any NexGen Flex Femoral Component (including Gender components), or (2) an MIS 5950 Stemmed Tibial Component used with any femoral component, or (3) any other Zimmer tibial component when used with any NexGen Flex Femoral Component.
2. If such a record does not exist, then Plaintiff's counsel may provide written certification to Defendants' Lead Counsel (via electronic transmission to nicole.brett@faegrebd.com) that Plaintiff's counsel has reviewed the records and has a reasonable and good faith basis for recommending continued prosecution of the matter within MDL-2272.
3. Plaintiffs shall submit the documentation or certification required in paragraphs 1 or 2 by February 15, 2015, in cases in which a PFS already has been served. For any Plaintiff—with a submitted PFS—who fails to supply the required information, Defendants will provide a CMO-8 notification to the Court identifying that Plaintiff

¹ Where there is evidence of loosening (or surgeon recommendation for removal or revision of a component in this paragraph), all Plaintiffs are required to comply, whether revised or unrevised.

who failed to comply with the requirements of this Order by the required date. A copy of that CMO-8 notification must be served on each Plaintiff's counsel, by ECF and U.S. Mail, and on the MDL Lead and Liaison counsel by ECF and electronic mail. The court will then dismiss the case without prejudice with each party bearing its own costs, subject to the conditions set forth in Paragraph 4 and 5 of this Order.

4. *Dismissal and Re-Filing of Revision Cases:* For any Plaintiff who has had revision surgery (of a product identified in paragraph 1), the dismissal will convert to a dismissal with prejudice within 60 days unless Plaintiff moves for reinstatement; provided, however, that any such motion for reinstatement must be accompanied by the documentation or certification required in Paragraphs 1 or 2.
5. *Dismissal and Re-Filing of Non-Revision Cases:* For a Plaintiff who has not had a revision surgery (of a product identified in paragraph 1), Defendants agree that the case may be dismissed without prejudice with each party bearing its own costs. In the event that the Plaintiff later experiences a revision to one of the products identified in paragraph 1, Defendants further agree that the filing date, for purposes of any statute of limitations defense, shall be the date of the original filing, provided that the Plaintiff refiles the case within 180 days of the revision surgery. The parties' agreement, however, does not waive any rights to challenge or defend the timely filing of an action based upon the applicable statute of limitations at the time of the original filing.² This paragraph applies only to the claims of unrevised Plaintiffs that are pending in MDL-2272 at the time of the entry of CMO-8 and who file stipulations of

² This paragraph also applies to Plaintiffs who have undergone bilateral implantation surgery of a product listed in paragraph 1, but who have not yet undergone revision surgery of one (or both) knees. Moreover, absent presentation of evidence of loosening as described in paragraph 1, any claims for recovery related to the unrevised knee are presumed dismissed without further action by the court.

dismissal in MDL-2272 on or before February 15, 2015. Stipulations of dismissal filed by unrevised plaintiffs prior to the entry of CMO-8, or after February 15, 2015, are excluded from this paragraph.

6. *New Cases and Cases with no Fact Sheet*: In cases in which a PFS has not been served or a Complaint has not been filed, Plaintiffs shall submit the documentation or certification required in Paragraphs 1 or 2 consistent with the deadlines set forth in CMO-2. The failure to supply this information shall be subject to the deficiency process outlined in CMO-2.

This order is without prejudice to any future motion by any party for dismissal or summary judgment as to any claim by any Plaintiff in this litigation.

Dated: December 10, 2014



REBECCA R. PALLMEYER
United States District Judge