

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

**IN RE: ZIMMER NEXGEN KNEE IMPLANT)
PRODUCTS LIABILITY) No. 11 C 5468
)
) Judge Rebecca R. Pallmeyer**

ORDER

Status hearing held on 8/18/2017. After review of the parties' memoranda and oral submissions, the court rules on the pending motions as follows:

- Zimmer's motion to order expert reports from Plaintiffs who were implanted with the "dropdown stem extension" [2289] is granted. Such report are to be furnished within 45 days. Failure to do so may result in dismissal.
- Zimmer's motion to bar introduction of x-rays [2292] not furnished to Zimmer in nine cases is denied, but all Plaintiffs' counsel are directed to confirm in writing within seven (7) days that all available medical records, including x-rays, have been produced.
- In four cases in which Dr. Courtney testified, prompt dismissal followed. The court shares Defendants' concerns that these circumstances create a basis for suspicion regarding his testimony and methodology. Plaintiffs have, however, technically complied with CMO 11. Without taking a position on the wisdom of further reliance on Dr. Courtney, the court denies this motion [2290].
- Zimmer's motion for summary judgment in certain cases rests on the assertion that these cases cannot survive summary judgment without expert testimony on causation, and that CMO-11 expert declarations are inadequate to this purpose. CMO-11 was not, however, a device to require production of reports sufficient to overcome a motion for summary judgment. This motion [2293] is denied without prejudice to individual motions for summary judgment. The court acknowledges that briefings such motions in the substantial number of cases at issue will be burdensome, but that burden is justified in any case that counsel believes should otherwise proceed to trial.

Having heard the parties' competing proposals for completion of this litigation, the court agrees with counsel for both sides that all bellwether trials should be scheduled to be completed before the end of 2018. The court directs that selection of bellwether trials should generally be representative of the three types of cases remaining, but within those groups should be at random. The court will entertain the possibility of multiple-Plaintiff trials only if issues of liability and damages are substantially overlapping. Consistent with these directions, counsel will confer and negotiate a proposed Case Management Order 12.

In addition, the court directs the parties to develop and propose a protocol for mediation, to proceed simultaneously with summary judgment briefing and with bellwether trial preparation.

Further status hearing is set for September 21, 2017 at 10:00 AM.

ENTER:

A handwritten signature in black ink, appearing to read "Rebecca R. Pallmeyer", with a long horizontal flourish extending to the right.

Dated: August 18, 2017

REBECCA R. PALLMEYER
United States District Judge

(T:02:00)