

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. 12**

This Court intends to proceed to conclusion of consolidated proceedings of this MDL by the end of 2018, through use of trials, dispositive motions, settlement efforts and following that, recommendation of remand of any unresolved cases. To that end, this Case Management Order No. 12 (“CMO-12”) directs the parties as to further case management. CMO-12 shall control the next group of trial selections, the trial process, and the process towards resolution of cases within this MDL.

1. Screening, Withdrawals, and Dismissals. Before the Court selects the pool of cases to be worked up for the next set of trials (“Trial Pool”), and to mitigate the possibility of trial dismissals, the Court urges all counsel for plaintiffs to review their cases and ensure that they will proceed towards trial, if selected. If counsel for a plaintiff concludes there is not justification to proceed, counsel must file a stipulation of dismissal with prejudice, or a motion for leave to withdraw, on or before October 20, 2017. All motions for leave to withdraw not filed on or before October 20, 2017 will be denied, absent good cause shown. Any case not dismissed by October 20, 2017 that, without good cause, later becomes the subject of a motion for voluntary dismissal or a motion to withdraw may be the subject of sanctions.

2. Census. The Court understands that a spreadsheet census containing a list of all pending cases remaining in the MDL - sorted by Plaintiff name, Plaintiff’s law firm, the device(s) at issue (NexGen Flex femoral component or MIS Tibial Component), and categorized

by the type of loosening in Flex cases (femoral or tibial loosening) (the "Census") - has been circulated to counsel for the plaintiffs with cases centralized in the MDL. Prior to October 17, 2017, counsel for all plaintiffs shall inform Plaintiffs' Co-Lead Counsel, Tobias Millrood, if they disagree with the categorization of their case(s) in the Census. If counsel for any plaintiff did not receive a copy of the Census, counsel shall promptly contact Mr. Millrood to obtain a copy in time to make any needed adjustments prior to the October 17, 2017 deadline. By October 23, 2017, counsel for Zimmer and Plaintiffs will provide to the Court a finalized version of the Census.

3. Trial Eligibility. All plaintiffs that have complied with CMO-8 and CMO-9, or who had a deadline to comply with these orders prior to October 20, 2017, are eligible for trial selection, except as otherwise provided in this paragraph. In cases in which plaintiffs have complied with CMO-9, only those cases that meet the criteria for Track One cases, as defined in CMO-9, are eligible for trial selection. In cases in which plaintiffs have failed to comply with CMO-9 but had a deadline to do so prior to October 20, 2017, cases will be included and eligible for trial if a Flex femoral component or a 5950 MIS Tibial Component is confirmed to have been implanted. Cases in which counsel files a stipulation of dismissal or a motion to withdraw on or before October 20, 2017 will be excluded from eligibility for trial selection.

4. Trial Pool Selection. The trial case pool ("Trial Pool") will consist of 36 cases selected randomly from all cases in the MDL that are eligible for trial under Paragraph 3 above. Using the Census, twelve cases will be selected for each of three categories on October 23, 2017, or as soon as convenient for the Court on any date thereafter: (1) cases involving loosening of an MIS Tibial Component; (2) cases involving loosening of a NexGen Flex femoral component without an MIS Tibial component; and (3) cases involving loosening of a tibial component other than an MIS Tibial Component when the tibial component was implanted with a Flex femoral

component. By October 30, 2017, the parties will exchange all medical records and x-rays in their respective possessions for the 36 plaintiffs in the Trial Pool. On November 10, 2017, each party will strike four cases from each category by filing a Notice of Trial Pool Strikes with the Court at 12 PM CST. In that same filing, each party will provide notice if a party in any of the Trial Pool cases refuses to waive the venue rights recognized under *Lexecon*. Should any party refuse to waive *Lexecon* in a case, the opposing side will receive an additional strike for each non-waiving party. The opposing side will also have the option of requesting that the Court try the case in which the party refused to waive *Lexecon* via an inter-district transfer, with the consent of the transferor district. Thus, such a non-waiver of *Lexecon* will not eliminate the case from the Trial Pool.

5. Trial Selection. On November 17, 2017, the parties will each submit one-page briefs (no more than 12 pages total) containing a summary of facts and a statement of appropriateness for trial selection of each of the remaining cases. The Court will then select two cases involving loosening of an MIS Tibial Component for trial workup. At that point, Zimmer will select one case from either the NexGen Flex femoral loosening category or the NexGen Flex tibial loosening category for trial workup. Then, the Court will select three additional cases from the NexGen Flex femoral loosening and NexGen Flex tibial loosening categories by selecting two cases from the category from which Zimmer did not make its pick, and one case from the category in which Zimmer did make its pick. Thus, six total cases will be prepared for trial, with two cases from each of the three categories.

6. Trial Ready Dates. The six cases should be worked up and ready for trial on the following timeline:

**Two MIS Tibial Component Loosening Cases – June 2018** >

**Two NexGen Flex Femoral Loosening Cases – September 2018** >

**Two NexGen Flex Tibial Loosening Cases – November 2018**

Discovery will begin in all cases upon selection of a case, and it will conclude 45 days before the trial's start date. 90 days prior to each trial setting's actual trial start date, the Court will declare which one of the two cases will proceed to trial for that trial setting. The parties agree not to seek consolidation of cases for trial, and that all of the trials will thus be single-plaintiff trials.

7. Deadlines for Trials. The parties and the Court will determine case-specific pretrial schedules and deadlines, including the exact trial start date, in a separate order, once the six cases selected for trial have been identified.

8. Parallel Resolution Program and Mediation Deadline. While the parties proceed towards trials as described above, the Court expects a parallel program aimed at a plan for resolution of cases. The parties are required to hold a good-faith mediation aimed at a global resolution with a private mediator or a district judge prior to January 31, 2018.

9. Remand. The Court will entertain suggestion of remand motions for the orderly wind-up of this MDL, but not until after the three trials contemplated by CMO-12 have been completed. Priority for remand will be given to the three cases that were worked up for trial as part of CMO-12, but not selected for trial.

ENTER:

Dated: ~~[DATE]~~

October 11, 2017



Hon. Rebecca R. Pallmeyer  
United States District Judge