

Multiple Documents

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| 2 | Exhibit A - [Proposed] Case Management Order No. 13 |

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 |

JOINT MOTION FOR ENTRY OF CASE MANAGEMENT ORDER NO. 13

Co-Lead Counsel for Plaintiffs and Co-Lead Counsel for Zimmer, Inc. hereby jointly move the Court to enter Case Management Order No. 13 (“CMO-13”) (attached as Exhibit A). If entered, CMO-13 would replace CMO-12 and direct future proceedings in *In re NexGen Knee Implant Products Liability Litigation* (the “NexGen MDL”). In support of this Joint Motion, Co-Lead Counsel state as follows:

1. On January 12, 2018, Co-Lead Counsel for Plaintiffs and Co-Lead Counsel for Zimmer held a global mediation pursuant to the requirements of this Court’s Case Management Order No. 12.
2. During the global mediation, the parties reached an agreement in principle on a confidential settlement that will potentially resolve the entirety of cases properly consolidated in this Court, as well as similar cases in state courts, that were pending as of January 15, 2018.
3. Consistent with the desire for the confidential settlement to conclude this litigation to the fullest extent possible, Case Management Order No. 13 would enact a stay of all consolidated proceedings, as well as all proceedings in individual cases, pending finalization and administration of the confidential settlement.

4. Furthermore, Case Management No. 13 would ensure that any newly filed cases, or any cases that are not resolved as a result of the confidential settlement, have support from experts willing to testify in the cases. Specifically, Case Management Order No. 13 would require plaintiffs in any cases filed after January 15, 2018 to provide case-specific Rule 26(a)(2) expert reports covering all of the elements of their claims under applicable law, including negligence and/or defect and causation, within 90 days of transfer to these consolidated proceedings in the District Court for the Northern District of Illinois.

5. The proposed CMO-13 is attached as Exhibit A to this Joint Motion.

WHEREFORE, Co-Lead Counsel for Plaintiffs and Co-Lead Counsel for Zimmer hereby jointly request entry of Case Management Order No. 13.

Dated: February 6, 2018

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

POGUST BRASLOW & MILLROOD, LLC

/s/ Peter A. Meyer

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CERTIFICATE OF SERVICE

I certify that on February 6, 2018, a copy of the foregoing document was filed electronically. Parties may access this filing through the Court's system.

/s/ Peter A. Meyer _____

EXHIBIT A

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. 13

Co-Lead Counsel for both Plaintiffs and Zimmer, Inc. have filed a Joint Motion for Entry of Case Management Order No. 13 (“CMO-13”). In the Joint Motion, counsel report that, after the global mediation required by Case Management Order No. 12 and further negotiations, counsel have reached a confidential settlement in principle that will potentially resolve the entirety of cases properly consolidated in this Court, as well as similar cases in state courts, that were pending as of January 15, 2018. To allow Co-Lead Counsel to finalize and administer this confidential settlement in principle, and to encourage the full resolution of this litigation, the Court enters CMO-13 to direct all participants in *In re: Zimmer NexGen Knee Implant Products Liability Litigation* (the “NexGen MDL”) as to further case management.

1. Replacement of CMO-12. This CMO-13 replaces CMO-12 and eliminates any deadlines and framework for further proceedings outlined in CMO-12.
2. Stay of Proceedings. Effective immediately, all consolidated proceedings in this MDL, as well as any proceedings in individual cases consolidated in the MDL (including those selected for trial under CMO-12), are stayed pending the outcome and administration of the parties’ confidential settlement in principle.
3. Coordination. All plaintiffs and counsel for plaintiffs with cases in the NexGen MDL are required to coordinate and consult with Co-Lead Counsel or Liaison Counsel for the

plaintiffs, Tobi Millrood and Pete Flowers, on potential resolution of their cases under the parties' confidential settlement in principle.

4. Expert Reports for Newly Filed and Unsettled Matters. Plaintiffs in any newly filed cases, or any cases that are not resolved as a result of the confidential settlement, must have support from case-specific experts willing to testify at trial in their cases. Thus, plaintiffs in any cases filed after January 15, 2018 must serve Zimmer's Co-Lead Counsel with Rule 26(a)(2) expert reports within 90 days of transfer to these consolidated proceedings in the District Court for the Northern District of Illinois. Proceedings in these newly filed cases will remain stayed pending administration of the confidential settlement in principle. Similarly, once administration of the confidential settlement in principle is complete, Plaintiffs' Co-Lead Counsel shall file a notice informing the Court of any plaintiffs whose cases were eligible for settlement but were not resolved. After Plaintiffs' Co-Lead Counsel files this notice, these plaintiffs with unresolved cases will have 60 days to serve Zimmer's Co-Lead Counsel with Rule 26(a)(2) expert reports. The expert reports required by this paragraph must contain admissible opinions establishing all elements of the plaintiffs' claims requiring expert testimony, including, where necessary, defect and/or negligence and causation. The expert reports must also be provided by the experts who will testify on the plaintiffs' behalf at trial, absent leave of court under exceptional circumstances.

5. Failure to Provide Expert Reports and Voluntary Dismissals. Plaintiffs and Plaintiff's counsel in any newly filed cases, or any cases that are not resolved as a result of the confidential settlement, who fail to serve the expert report required by Paragraph 4 by their deadline to do so, or who voluntarily dismiss their cases after that deadline, shall be sanctioned.

6. Status Reports. Co-Lead Counsel for both parties shall provide regular updates to the Court on the finalization of the confidential settlement in principle, as well as Plaintiffs' Co-Lead Counsel's progress on the administration and execution of the settlement.

ENTERED:

Dated: _____

HON. REBECCA R. PALLMEYER
United States District Judge