UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

**CASE MANAGEMENT ORDER NO. 9**

To encourage continued progress toward resolution of cases in these consolidated proceedings, the court hereby orders:

1. Proof of High-Flexion; Medical Records

Plaintiffs shall submit, as a supplement to the Plaintiffs' Fact Sheet ("PFS"), a medical record which demonstrates the attainment of knee flexion, post-implant, equal to or greater than 120 degrees.

2. Proof of High-Flexion; Other

If a medical record described in Paragraph 1 does not exist, Plaintiff's counsel may provide written declaration to Defendants' Lead Counsel (via electronic transmission to nicole.brett@faegrebd.com) that Plaintiff's counsel has reviewed the medical records and conferred with his or her client, and as a result has a reasonable and good faith basis for contending that the client did achieve high flexion activity.

3. Proof of 5950

In the cases in which plaintiff claims a defect in a NexGen MIS Stemmed Tibial Component, catalog number 00-5950 et seq. ("5950 Tibial Component"), Plaintiffs shall submit, as a supplement to the Plaintiffs' Fact Sheet ("PFS"), a medical record that demonstrates the

implantation and subsequent loosening of the 5950 Tibial Component. Where Plaintiff also has loosening of a high flex femoral component, he/she also is obligated to comply with paragraphs 1 or 2.

4. Acknowledgment of Lack of High-Flexion or 5950 Tibial Component Loosening

If Plaintiffs can provide neither the documentation nor the declaration described in the paragraphs above, Plaintiffs shall send written acknowledgment of the same (via electronic transmission to nicole.brett@faegrebd.com).

5. Deadline for Submission and Creation of Track One

Plaintiffs shall submit the documentation, declaration, or acknowledgment required in paragraphs 1-4 by February 12, 2016, in cases in which a PFS already has been served. All cases in which either a medical record or written declaration has been provided pursuant to paragraphs 1-3 will be eligible for bellwether selection pursuant to Case Management Order No. 10 as Track One Cases.

6. Creation of Track Two

All cases in which documentation or declaration is not provided under paragraphs 1-4 shall be categorized as "Track Two" Cases. Track Two Cases will not be eligible for bellwether selection pursuant to Case Management Order No. 10.

7. Causation Expert Reports in Track Two Cases

Each plaintiff in a Track Two Case will, on or before September 1, 2016, provide a Rule 26(a)(2) expert report offering an opinion that some aspect of the NexGen Flex product, other than the attainment of high-flexion, resulted in injury or damage. These reports shall be submitted via electronic transmission to nicole.brett@faegrebd.com.

8. New Cases and Cases With No PFS

a. In cases in which a PFS has not been served or a Complaint has not been filed, Plaintiffs shall submit the documentation, declaration, or acknowledgement required in paragraphs 1-4 of this order within 90 days of filing. If a plaintiff in such case fails to comply with paragraphs 1-4 of this order, upon written notification by Zimmer, Plaintiffs shall have 30 days to comply.

b. The failure to supply this information shall be subject to the deficiency process outlined in CMO-2. For these additional plaintiffs who cannot submit the documentation or declaration required in paragraphs 1-4, the deadline to provide the expert report required under paragraph 7 will be 240 days from the date of transfer.

9. Zimmer's Deadline to Provide Responsive Expert Reports

Zimmer will have 90 days following the production of plaintiffs' Rule 26(a)(2) expert report(s) to provide responsive Rule 26(a)(2) expert report(s) for all Plaintiffs who have served a PFS as of the date of this order. For new cases or cases in which a PFS has not been served as of the date of this order, Zimmer will have 90 days from the date of Plaintiff's service of the expert report to provide the responsive expert report.

10. Failure to Comply

On or before February 17, 2016, Zimmer shall file a list of any plaintiffs who have failed to comply with the requirements of paragraphs 1-4 and provide notice of this failure to these plaintiffs' counsel by mail. Plaintiffs on this list will have until March 15, 2016, to both comply with the requirements of paragraphs 1-4 and file a brief with the court showing cause for the failure to comply timely with this Order. On April 15, 2016, Zimmer shall again file a list of all

plaintiffs who have still failed to comply with paragraphs 1-4, and the court will issue an order promptly dismissing these cases with prejudice.

11. Continuing Discovery Obligation

The parties have confirmed their understanding that there is a continuing obligation to supplement discovery, including production of any supplemental medical records. If Defense counsel suspect this obligation has not been met in any case(s), they will contact Plaintiff's counsel to resolve the issue, or will seek records directly, pursuant to HIPAA authorizations that should already have been executed.

ENTER:

January 22, 2016

REBECCA R. PALLMEYER
United States District Judge