

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MDL No. 2859

ZIMMER M/L TAPER HIP PROSTHESIS OR M/L TAPER
HIP PROSTHESIS WITH KINECTIV TECHNOLOGY AND
VERSYS FEMORAL HEAD PRODUCTS LIABILITY
LITIGATION

18-MD-2859 (PAC)
18-MC-2859 (PAC)

Order No. 66

This Document Relates to All Actions
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PAUL A. CROTTY, United States District Judge:

**ORDER STAYING ALL PROCEEDINGS
DURING CLOSED SETTLEMENT PROGRAM AND GOVERNING
LITIGATION OF CASES FOR NON-SETTLING PLAINTIFFS**

On April 13, 2022, the Plaintiffs' Executive Committee ("PEC") and counsel for Zimmer, Inc. advised the Court that, after a global mediation and further negotiations, the PEC and Zimmer have executed a Master Settlement Agreement with confidential terms. The Master Settlement Agreement creates a closed, private settlement program that includes and seeks to resolve all cases centralized in this Court, as well as similar cases in state courts, that were pending as of September 17, 2021 (the "Settlement Program"). The Settlement Program will not include any cases filed after September 17, 2021. To allow the PEC and Zimmer to finalize and administer the Settlement Program, and to encourage a global resolution of this litigation, the Court enters this Order to direct all participants in MDL No. 2859 as to further case management.

1. Stay of Proceedings. Effective immediately, all consolidated proceedings in MDL No. 2859, as well as any proceedings in individual cases consolidated in the MDL, are stayed pending the outcome of the Settlement Program. This stay will remain in effect until the parties advise the Court that the conditions necessary for and payment by Zimmer of claims in the Settlement Program has occurred.

2. Coordination. All plaintiffs and counsel for plaintiffs with cases in MDL No. 2859 filed before September 17, 2021 are required to participate in the Settlement Program and to coordinate and consult with the PEC on the attempted resolution of their cases.

3. Expert Reports for Unsettled Matters. Plaintiffs in all cases still pending in MDL No. 2859 after completion of the Settlement Program must have support from a case-specific expert willing to testify at trial in their cases. Once administration of the Settlement Program has concluded, the PEC and co-lead counsel for Zimmer shall file a notice informing the Court of any plaintiffs whose cases did not settle and are still pending in MDL No. 2859. Any plaintiff with a case still pending after the conclusion of the Settlement Program will have until April 15, 2023 to serve a Rule 26(a)(2)(B) expert report containing a case-specific opinion that a product defect caused injury from an expert witness whom the plaintiff will call to testify at any eventual trial. Plaintiffs submitting Rule 26(a)(2)(B) expert reports on or before the April 15, 2023 deadline will then be required to formally mediate their cases, before those cases can continue with further pretrial proceedings. Cases in which non-settling plaintiffs fail to supply the required Rule 26(a)(2)(B) expert reports will be the subject of a motion by Zimmer seeking dismissal of any and all claims requiring expert testimony under applicable substantive state law.

4. Status Reports. The PEC and counsel for Zimmer shall provide a status update to chambers on the progress of the Settlement Program on or before October 31, 2022.

Dated: 5/3/2022

ENTERED: and on or before July 15, 2022.
Paul A. Crotty

HON. PAUL A. CROTTY
United States District Judge