

IN RE STRYKER REJUVENATE &  
ABG II MODULAR HIP  
IMPLANT LITIGATION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY  
CIVIL ACTION

This Document Relates To the Following  
Matter Only:

CASE NO. 296  
Master Docket No. BER-L-936-13 MCL  
**Individual Case Docket No. BER-L-3661-13**

**BERNER, Constance BER-L-3661-13**

**FILED**

**ORDER OF DISMISSAL WITH  
PREJUDICE**

**MAY 25 2023**

**RACHELLE L. HARTZ  
J.S.C.**

Pursuant to the New Jersey Supreme Court Order of January 15, 2013, MCL No. 296 (Master Docket Number BER-L-936-13) was assigned to this Court for centralized case management. Accordingly, this Court is charged with management of this MCL docket, generally, as well as the individual matters that collectively comprise the MCL docket.

On April 25, 2023, the Court entered an Order Regarding Certain Identified Pending Matters and Case categories. The Order identified three categories of pending MCL cases: 1) Unrevised Plaintiffs; 2) Plaintiffs with Unaffected Products (i.e., not the two medical devices at issue in this MCL— *Rejuvenate Modular Hip Stem System or ABGII Modular Hip Stem System*); and 3) Plaintiffs who were determined to be or are otherwise ineligible for the prior settlement programs established during the course of this 2013 MCL. Included with the April 25 Order was an Exhibit A listing the cases and categories falling into one or more of the identified case categories. The Order further scheduled a May 24, 2023 Order to Show Cause hearing at which counsel and each of their clients were required to appear via conference call or Zoom to show cause why each of these matters should not be dismissed with prejudice. Specific notice requirements were provided in the Order. The Order also noted that if current counsel wished to seek to withdraw as counsel then notice should be provided in advance of the hearing of their intention to do so. The Order further stated: “Unless a dismissal has been entered voluntarily prior to May 24, 2023, then if a plaintiff or plaintiffs in one of the identified lawsuits fails to appear via

telephonic or Zoom conference on May 24, 2023, then the Court shall dismiss his/her lawsuit with prejudice, and permit current counsel to withdraw.”

Included in the April 25, 2023 Order was the lawsuit of Plaintiff Constance Berner, an ineligible settlement program plaintiff case (Docket No. BER-L-3661-2013). On May 5, 2023, the Court entered an Order regarding additional notice to Plaintiff Berner and providing the detailed Zoom or conference call instructions and an assigned hearing time of 2:15PM (ET). The May 5, 2023 Order reiterated that if Plaintiff failed to appear at the conference (by Zoom or telephone) then the Court would dismiss the lawsuit with prejudice and without further notice.

Prior to the May 24, 2023 hearing, counsel for Plaintiff filed a motion to be relieved as counsel, which was unopposed. On May 24, 2023, the Court held a hearing in the Berner matter at the noticed time using the conference call and Zoom information set forth in the prior notice order. Counsel for the parties appeared at the assigned time and Plaintiff’s counsel provided a recitation of compliance with the notice requirements to the Plaintiff. Plaintiff Berner failed to appear at the hearing despite notice of same.

Accordingly, pursuant to its inherent authority and case management duties, the Court hereby issues the following Order:

IT IS on this 25<sup>th</sup> day of May 2023 **ORDERED**:

1. Only the following matter is within the scope of this Order:
  - **CONSTANCE BERNER v. Howmedica Osteonics Corp., et al.** (BER-L-3661-2013)
2. Plaintiff’s counsel’s motion to withdraw is granted.
3. The identified matter is hereby dismissed with prejudice.

Dated: May 25, 2023

  
HON. RACHELLE L. HARZ, J.S.C.