

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: STRYKER REJUVENATE AND ABG
II HIP IMPLANT PRODUCTS LIABILITY
LITIGATION

MDL No. 13-2441 (DWF/DJF)

This Document Relates to:

Phyllis Nowak,

Plaintiff,

v. Civil No. 14-2269 (DWF/DJF)

Howmedica Osteonics *d/b/a* Stryker
Orthopaedics, Stryker Corp., Stryker Sales
Corporation, and Stryker Ireland Limited,

Defendants.

ORDER

The Court previously entered Pretrial Order No. 42 (“PTO #42”), (MDL Doc. No. 1394), establishing certain mandatory tolling election response obligations on the part of Unrevised Plaintiffs in this multidistrict litigation. On January 15, 2020, the Court also entered Pretrial Order No. 44 Regarding Pending and Future Requests to Withdraw as Counsel in this MDL (“PTO #44”) (MDL Doc. No. 1567).

Pursuant to PTO #42, counsel in the above captioned matter, *Phyllis Nowak v. Howmedica Osteonics Corp. d/b/a Stryker Orthopaedics, Stryker Corp., Stryker Sales Corporation, and Stryker Ireland Limited*, attempted to confer with his client, but was unable to do so based upon her medical incapacity at the time of the required notice deadline. To protect Plaintiff’s interests during her medical incapacity, counsel filed the

required election form deferring the tolling option. Ultimately, counsel became aware of Plaintiff Nowak's death in late 2019 at which time she was still unrevised. Her counsel has indicated that attempts were made to communicate with the decedent's family to discuss the status of the litigation and either discontinuance or pursuit of the case by decedent's estate or legal representative, but no response was ever provided. Accordingly, pursuant to PTO #44, decedent's counsel now wishes to withdraw in this unrevised, deceased Plaintiff case.

Based upon the foregoing and the record in this case, **IT IS HEREBY ORDERED** that:

1. The following notice is issued to the estate or appointed legal representative of the deceased, unrevised Plaintiff in the above captioned matter, *Phyllis Nowak v. Howmedica Osteonics Corp. d/b/a Stryker Orthopaedics, Stryker Corp., Stryker Sales Corporation, and Stryker Ireland Limited* (Civil No. 14-2269 (DWF/DJF)).

2. The estate or appointed legal representative of the deceased, unrevised Plaintiff must respond to the Court (to be communicated through current counsel) addressing each of the following inquiries: (i) identify the decedent's legal estate, successor, or personal representative with legal authority to act on behalf of the decedent's estate (including confirming documentation of such legal status), and (ii) given the unrevised status of the decedent at the time of death, state whether or not the legal estate, successor, or personal representative with legal authority to act on behalf of the decedent's estate consents to a dismissal of this litigation. If the legal representative affirmatively chooses to continue the litigation on behalf of the decedent,

then the legal representative must file the following (through current counsel) within 14 days of this Order: (i) a motion to substitute decedent's legal estate, successor, or personal representative as Plaintiff in the matter (including confirming documentation of such legal status); and (ii) identification of substituting counsel, or, if no counsel, then a statement of the intention of the legal successor or appointed representative to proceed *pro se* with the litigation.

3. If no response to this Order is received by the Court within 14 days, then current counsel will be permitted to withdraw and the above captioned matter, *Phyllis Nowak v. Howmedica Osteonics Corp. d/b/a Stryker Orthopaedics, Stryker Corp., Stryker Sales Corporation, and Stryker Ireland Limited*, will be **DISMISSED WITH PREJUDICE**, and without further notice.

Dated: April 16, 2025

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge