

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DANIEL NYKIEL and ANNEMARI COOLEY,
individually and as the representatives of a class
of similarly situated persons, and on behalf of The
Smith & Nephew U.S. Savings Plan,

Plaintiffs,

v.

SMITH & NEPHEW, INC., BOARD OF
DIRECTORS OF SMITH & NEPHEW, INC.,
US PENSION AND BENEFITS EXECUTIVE
COMMITTEE OF SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 1:24-cv-12247-NMG

NOTICE OF CLASS ACTION SETTLEMENT

This notice advises you of the Settlement of *Nykiel, et al., v. Smith & Nephew, Inc., et al.*, Case No. 1:24-cv-12247-NMG (D. Mass.) (the “Action”).

On August 30, 2024, Plaintiffs Daniel Nykiel and Annemari Cooley filed a Class Action Complaint on behalf of the Smith & Nephew U.S. Savings Plan (the “Plan”) asserting claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1109, 1132, for breach of fiduciary duties against Smith & Nephew, Inc. (“Smith & Nephew” or “the Company”), the Board of Directors of Smith & Nephew, Inc., (the “Board”), and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc. (the “Committee” and, collectively with the Board and the Company, “Defendants”) during the period from August 30, 2018 through May 13, 2026 (the “Class Period”).

The parties in the Action have reached a Settlement and, if approved by the Court, the Settlement will release Defendants and related parties from any claims filed against them in the Action or arising out of the administration of the Plan during the Class Period. The terms and conditions of the Settlement are set forth in a Settlement Agreement & Stipulation (the “Settlement Agreement”). Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement and additional information with respect to the Action and the Settlement are available at www.SmithandNephewERISA.com.

The Parties have agreed to settle this case for \$350,000.00 (the “Gross Settlement Amount”). The Parties have also agreed that, as part of the Settlement, Smith & Nephew will direct the Plan’s fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan’s fiduciaries in their sole discretion. The Court has scheduled a hearing concerning Final Approval of the Settlement and Class Counsel’s anticipated motion for attorney’s fees and costs. That hearing, before the Honorable Nathaniel M. Gorton is scheduled on September 18, 2026, at 2:00 p.m. in Courtroom 4, 3rd Floor of the U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 2300 Boston, MA 02210.

If Final Approval is granted, the Settlement will bind you as a member of the Settlement Class. You may appear at this hearing and/or object to the Settlement. Any objection to the Settlement and/or the motion for attorney’s fees and costs must be served in writing on the Court and the Parties’ counsel. More information about the hearing and how to object is explained below.

YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU TAKE ANY ACTION. READ THIS NOTICE CAREFULLY. PLEASE DO NOT CONTACT DEFENDANTS OR THE COURT. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You can do nothing. (No action is necessary to receive a payment.)	If the Settlement is approved by the Court and you are a member of the Settlement Class entitled to a payment under the Plan of Allocation, you need not do anything to receive a payment.
You can submit an objection. (It must be postmarked by September 4, 2026.)	If you wish to object to any part of the Settlement, you may write to the Court and Counsel and explain why. For more information and where to send your objection, see Question 13, below.
You can appear at the Final Fairness Hearing on September 18, 2026.	If you submit a written objection to the Settlement before the Court-Approved Deadline, you may (but do not have to) speak in Court about the fairness of the Settlement.

SUMMARY OF ACTION

As described in more detail below, Plaintiffs' Class Action Complaint alleges on behalf of the Plan that Defendants breached ERISA fiduciary duties of prudence owed to participants in and beneficiaries of the Plan during the Class Period related to the Defendants' fiduciary choices made around the Plan's managed account services. Defendants deny these allegations. The Action is brought on behalf of the Plan and seek recovery on behalf of the Plan during the Class Period.

Copies of the Class Action Complaint, Settlement Agreement, and related documents are available at www.SmithandNephewERISA.com.

SUMMARY OF THE SETTLEMENT AGREEMENT

The Settlement Agreement provides that Defendants will pay \$350,000.00, which will be deposited into an account called the Qualified Settlement Fund. After payment of attorneys' fees and litigation costs, and any expenses related to administration of the Settlement, the amount remaining in the Qualified Settlement Fund shall constitute the Net Settlement Amount and will be allocated among members of the Settlement Class according to a Plan of Allocation to be approved by the Court.

The Parties have also agreed that, as part of the Settlement, Smith & Nephew will direct the Plan's fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan's fiduciaries in their sole discretion.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

Class Counsel believe that the claims against Defendants are well-grounded in law and fact and that ERISA violations have occurred in the Action. However, as with any litigated case, members of the Settlement Class would face an uncertain outcome if the Action was to continue against Defendants. Continued litigation of the Action could result in a range of possible recoveries, including a judgment or verdict greater or less than the recovery under the Settlement Agreement, or no recovery at all.

Class Counsel believe that this Settlement reflects a reasonable compromise in light of the range of possible outcomes. Class Counsel believe that the Settlement is preferable to continued litigation and is in the best interest of the members of the Settlement Class because the Settlement provides certainty with respect to the amount of recovery and results in a prompt recovery.

Throughout this litigation, Defendants have denied and continue to deny the claims and contentions alleged by Plaintiffs. Defendants have strong and well-thought-out defenses. Nevertheless, Defendants have concluded that it is desirable for the Action to be fully and finally settled as to it and the other Released Parties on the terms and conditions set forth in the Settlement Agreement.

The Court has not ruled in favor of either side. Both sides agreed to the Settlement to ensure a resolution and avoid the cost and risk of further litigation.

STATEMENT OF FEES AND EXPENSES INCURRED BY AN INDEPENDENT FIDUCIARY AND THE SETTLEMENT ADMINISTRATOR

An Independent Fiduciary is evaluating the Settlement and will be asked to authorize the Settlement on behalf of the Plan. The fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary and fees associated with the recordkeeper's administration of the Settlement) in the course of evaluating and authorizing the Settlement on behalf of the Plan will be independently paid by Defendants and are not part of the Gross Settlement Amount.

A Settlement Administrator has been engaged to mail the notice to the Members of the Settlement Class, administer the Settlement, and allocate the Net Settlement Amount among Members of the Settlement Class. The fees and expenses for the Settlement Administrator will be paid from the Gross Settlement Amount. Class Counsel believe and are informed that the Settlement Administrator's fees and expenses will not exceed \$100,000.00.

STATEMENT OF ATTORNEY'S FEES AND EXPENSES SOUGHT IN THE ACTION

Class Counsel will submit a fee petition to the Court in which they will ask the Court to award them attorneys' fees in an amount not to exceed 33% of the Gross Settlement Amount, plus reimbursement of out-of-pocket costs and expenses advanced by Class Counsel and reasonably incurred in prosecuting the Action.

QUESTIONS AND ANSWERS

1. Why did I receive a notice in the mail?

You received this Notice because you or someone in your family is or may have been a participant in or a beneficiary of the Plan at some time between August 30, 2018, through the present.

The Court ordered this notice to be sent to you because you have a right to know about the Settlement and all the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among members of the Settlement Class according to a Court-approved Plan of Allocation.

The Court in charge of this case is the United States District Court for District of Massachusetts. The individuals who sued are called the "Plaintiffs," and the parties they sued are called the "Defendants." The legal Action that is the subject of this notice and the Settlement is titled *Nykiel, et al., v. Smith & Nephew, Inc.*, Case No. 1:24-cv-12247-NMG (D. Mass).

2. What is the Action about?

While Defendants obtained successful dismissal of some alleged claims, the remaining viable claims in the Action assert that Defendants were fiduciaries to the Plan and violated statutory obligations under ERISA that Defendants owed to the Plan and the Plan's participants and beneficiaries. Plaintiffs allege Defendants breached certain fiduciary duties by causing the Plan to incur higher administrative fees and expenses than reasonable and necessary in relation to the managed account services used by the Plan.

Defendants deny each and every allegation of wrongdoing made in the Complaint and contend that they have no liability in the Action. Defendants specifically deny the allegations that they breached any fiduciary duty or any other provisions of ERISA in connection with the administrative fees or expenses incurred by the Plan, including but not limited to in the Plan's use of managed account services, and further deny that they in any way failed to act prudently or loyally to the Plan's participants and beneficiaries.

3. Why is this case a class action?

In a class action, one or more plaintiffs sue on behalf of a large number of people who have similar claims. All the individuals

on whose behalf the plaintiffs are suing are “Class Members.” One court resolves the issues for all Class Members. In its order setting the Final Fairness Hearing, the Court preliminarily certified the Settlement Class in the Action.

4. Why is there a settlement?

The Court has not reached any final decision in connection with Plaintiffs’ claims against the Defendants. Instead, Plaintiffs and Defendants have agreed to a Settlement. In reaching the Settlement, they have avoided the cost, risks, time, and disruption of prolonged litigation and trial.

Class Counsel believe that the Settlement is the best option for the Settlement Class members.

5. How do I know whether I am part of the Settlement Class?

The Court has held that this Settlement shall proceed on behalf of everyone who fits the following description:

All persons who were participants in or beneficiaries of the Smith & Nephew U.S. Savings Plan at any time between August 30, 2018, and May 13, 2026.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

The Settlement provides that Smith & Nephew or Defendants’ insurers will pay \$350,000.00 (the “Gross Settlement Amount”) into an account at a financial institution identified by the Settlement Administrator. The net amount of the Gross Settlement Amount, after payment of Court-approved attorneys’ fees and costs, and any expenses incurred administering the Settlement, will be allocated to the members of the Settlement Class according to a Plan of Allocation to be approved by the Court if and when the Court enters an order finally approving the Settlement.

In addition, the Settlement provides that Smith & Nephew will direct the Plan’s fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan’s fiduciaries in their sole discretion.

7. How much will my payment be?

If you qualify, you will receive a *pro rata* share of the Net Settlement Amount. Class Counsel have filed a detailed Plan of Allocation. It is available at www.SmithandNephewERISA.com. The Plan of Allocation describes the manner in which the Net Settlement Amount will be distributed to members of the Settlement Class. In general terms, the Plan of Allocation will provide that each Settlement Class member’s share of the Net Settlement Amount will be calculated as follows:

- A. The Settlement Administrator will calculate an average account balance for each Settlement Class member based on his or her total annual-ending account balances invested in the Plan for the Class Period (“Average Account Balance”).
- B. The Settlement Administrator will sum the Average Account Balances for all Settlement Class members.
- C. The Settlement Administrator will then determine the total settlement payment available to each Settlement Class member by calculating each such person’s pro-rata share of the Net Settlement Amount based on his or her Average Account Balance compared to the sum of the Average Account Balances for all Settlement Class members.
- D. If the dollar amount of the settlement payment to a Settlement Class member is calculated by the Settlement Administrator to be less than \$10.00, then that Settlement Class member’s payment or pro rata share shall be zero for all purposes.
- E. The Settlement Administrator’s calculations regarding settlement payments will be final and binding under the Court-approved Plan of Allocation.

8. How can I get a payment?

If the Settlement is given final approval, you will not have to do anything to get a payment from the Settlement if you are entitled to one under the Plan of Allocation.

9. When will I get my payment?

The balance of the Net Settlement Amount will be allocated to members of the Settlement Class pursuant to the Plan of Allocation after final approval has been obtained for the Settlement, including any appeals. Any appeal of the final approval may take a year or more. Please be patient.

There will be no payments if the Settlement is terminated.

The Settlement may be terminated on several grounds, which are described in the Settlement Agreement. In the event any of these conditions occur, there will be no Settlement payment made, and the litigation will resume.

10. Can I opt out of the Settlement?

No. In some class actions, class members have the opportunity to exclude themselves from the Settlement. This is sometimes referred to as “opting out” of the Settlement. Because of the legal issues involved in the Action, however, the class of participants affected by this Settlement has been preliminarily certified as a mandatory class. This means you cannot opt out of the benefits of the Settlement in order to pursue your own claims or for any other reason. Therefore, you will be bound by any judgments or orders that are entered in this Action, and if the Settlement is approved, you will be deemed to have released Defendants from any and all claims that were or could have been asserted in this case on your behalf or on behalf of the Plan or that are otherwise included in the release in the Settlement, other than your right to obtain the relief provided to you, if any, by the Settlement.

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve the Settlement, as described below.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the Action?

The Court has designated Walcheske & Luzi, LLC and Jonathan M. Feigenbaum, Esq as Class Counsel for the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will the lawyers be paid?

Class Counsel will file a petition for an award of attorneys’ fees and expenses by August 4, 2026, after which a copy will be posted on the settlement website (www.SmithandNephewERISA.com). This petition will be considered at the Final Fairness Hearing. Class Counsel have agreed to limit their application for an award of attorneys’ fees to not more than 33% of the Settlement Amount, plus out-of-pocket costs.

You have the right to object to this aspect of the Settlement even if you approve of the other aspects of the Settlement.

OBJECTING TO THE SETTLEMENT OR THE ATTORNEYS’ FEES

You can tell the Court that you do not agree with the Settlement or some part of it.

13. How do I tell the Court that I object to the Settlement?

If you are a member of the Settlement Class, you can object to the Settlement if you disagree with any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must send a letter or other written filing saying that you object to the Settlement. Be sure to include the following case caption and notation of: *Nykiel v. Smith & Nephew, Inc.*, Case No. 1:24-cv-12247-NMG (D. Mass).

In addition, your objection must also include your name, address, telephone number, signature, and the reasons why you object to the Settlement. Any objection must be signed by the Settlement Class member even if an attorney is retained by the Settlement Class member. **Mail the objection to each of the addresses listed below, postmarked no later than September 4, 2026. You must mail your objection by this date. If you fail to do so, the Court will not consider your objection.** If you plan to speak at the Fairness Hearing, you must send a Notice of Intention to Appear along with your objection, as described below:

COURT CLERK	PLAINTIFFS' COUNSEL	DEFENDANTS' COUNSEL
Clerk U.S. District Court John Joseph Moakley United States Federal Courthouse 1 Courthouse Way Suite 9200 Boston, MA 02210	Paul M. Secunda Walcheske & Luzi, LLC 1200 N. Mayfair Rd., Suite 270 Wauwatosa, WI 53226	Wesley E. Stockard Littler Mendelson, P.C. 3424 Peachtree Road NE Suite 1200, Monarch Tower Atlanta, GA 30326

14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing to decide whether to approve the Settlement as fair, reasonable, and adequate. You may attend the Final Fairness Hearing, and you may ask to speak, but you do not have to attend. The Court will hold the Final Fairness Hearing on September 18, 2026, at 2:00 p.m. in Courtroom 4, 3rd Floor of the U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 2300 Boston, MA 02210. At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Final Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorney's fees and expenses.

15. Do I have to come to the hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to attend the Fairness Hearing and voice your objection in person. As long as you mail your written objection on time, the Court will consider it when determining whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary.

16. May I speak at the hearing?

Only if you have previously filed an objection to the Settlement may you ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Final Fairness Hearing," in *Nykiel v. Smith & Nephew, Inc.*, Case No. 1:24-cv-12247-NMG (D. Mass). Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than September 4, 2026 and be sent to the Clerk of the Court, Class Counsel, and Defendants' counsel at the addresses listed above.

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing and you are a member of the Settlement Class and the Settlement is approved, you will participate in the Settlement of the Action as described in this notice.

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. *The complete Settlement is set forth in the Settlement Agreement.* You may obtain a copy of the Settlement Agreement on the settlement website, www.SmithandNephewERISA.com, or you may request one be mailed to you by contacting the Settlement Administrator at SmithandNephewERISA@noticeadministrator.com.

19. How do I get more information?

You may contact the Settlement Administrator at 877-518-9379 or by email using the Contact Us section of the website, www.SmithandNephewERISA.com. Class Counsel may be reached at: Paul M. Secunda, Walcheske & Luzi, LLC, 235 N. Executive Dr., Suite 240, Brookfield, WI 53005, email psecunda@walcheskeluzi.com, telephone: (414) 828-2372. Documents are also available at the office of the Clerk located at the U.S. District Court Courthouse, U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210.