## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

| IN RE: BIOMET M2a MAGNUM HIP | ) | CALICE NO | 2.10 MD 0201 |
|------------------------------|---|-----------|--------------|
| IMPLANT PRODUCTS LIABILITY   | ) | CAUSE NO. | 3:12-MD-2391 |
| LITIGATION (MDL 2391)        | ) |           |              |
| ,                            | j |           |              |
|                              | ) |           |              |
| This Document Relates to the | ) |           |              |
|                              | ) |           |              |
| Cases Listed on Exhibit 1    | ) |           |              |
|                              | ĺ |           |              |
|                              |   |           |              |

#### ORDER REGARDING METAL-ON-POLYETHYLENE CASES

This order applies to plaintiffs who were initially implanted with a metal-on-polyethylene (MOP) hip replacement system. A list of those cases is attached (Exhibit 1).

Since 2012, cases involving alleged defects in Biomet's M2a Magnum system of hip implant products have been consolidated in this court as part of the multidistrict litigation to allow for consolidated and efficient pretrial proceedings. Although originally limited to cases involving the M2a Magnum and M2a-38 metal-on-metal hip implants, the MDL docket now includes a small number of metal-on-polyethylene device cases. Those cases were stayed and discovery was suspended, with limited exceptions, pursuant to the scheduling order entered on December 21, 2015 [Doc. No. 3047]. As the multidistrict portion of this litigation draws to a close, the court needs to determine whether the stay should be lifted, so case specific discovery can begin, or whether the case should be remanded to local courts for further proceedings and trial.

To accomplish that goal, it is hereby ORDERED that:

(1) The plaintiffs listed on attached Exhibit 1 shall have the attached

Plaintiff's Expert Declaration of Causation (Exhibit 2) completed by an

orthopedic surgeon, and shall send the completed and signed form to lead

counsel for the Plaintiffs' Steering Committee by March 29, 2017, at the

following address:

Biomet MDL Plaintiffs' Steering Committee

Attn: Brenda S. Fulmer, Esq.

Searcy Denney Scarola Barnhart & Shipley

2139 Palm Beach Lakes Blvd.

West Palm Beach, FL 33409

Failure to complete and return the Expert Declaration by the March 29

deadline will result in dismissal of your case with prejudice.

(2) The Plaintiffs' Steering Committee shall immediately forward to

Biomet's counsel the Expert Declarations as they are received.

SO ORDERED.

ENTERED: <u>December 15, 2016</u>

/s/ Robert L. Miller, Jr.
Judge, United States District Court

Northern District of Indiana

# **EXHIBIT 1 - METAL-ON-POLYETHYLENE CASES**

| 1 | 3:15cv491  | GLYNN, David and Jeanne     |
|---|------------|-----------------------------|
| 2 | 3:16cv493  | HODGE, Sandra and William   |
| 3 | 3:15cv425  | JUST, Leroy                 |
| 4 | 3:14cv1651 | NELSON, Patricia and Willie |
| 5 | 3:16cv115  | WHITE, John                 |

### **EXHIBIT 2**

## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

|                              | ) |                                    |
|------------------------------|---|------------------------------------|
| IN RE: BIOMET M2a MAGNUM HIP | ) |                                    |
| IMPLANT PRODUCTS LIABILITY   | ) | Case No. 3:12-MD-2391-RLM-MGG      |
| LITIGATION (MDL 2391)        | ) |                                    |
|                              | ) | This Document Relates To All Cases |
|                              | ) |                                    |
|                              | ) |                                    |

## PLAINTIFF'S EXPERT DECLARATION OF CAUSATION

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9. I can state to a reasonable degree of medical certainty that Plaintiff's condition(s)

identified in paragraph 8 were caused by the Biomet metal-on-poly implant.

| 10. | I can state to a reasonable degree of medical certainty that Plaintiff's metal-on-poly |
|-----|--|
|     | implant (specify: had some actionable defect, was not designed in accordance with the  |
|     | state of the art, was not adequately described in Biomet's Instructions for Use).      |
| 11. | The basis for my opinions in paragraph 8 is (specify the grounds for your opinion,     |
|     | including specific records reviewed or medical literature; provide an attachment if    |
|     | necessary):  |
|     |  |
|     |  |
|     |  |
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|     |  |
| 12. | The basis for my opinions in paragraph 9 is (specify the grounds for your opinion,     |
|     | including specific records reviewed or medical literature; provide an attachment if    |
|     | necessary):  |
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| 13. | In forming my opinion in paragraph 9, I considered the following possible alternate    |
|     | causes of the injury or injuries listed in paragraph 8:                                |
|     |  |
|     |  |

| 14. I have ruled out the possible alternate | e causes listed in paragraph 13 because:   |
|---|--|
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|   | aph 10 is (specify the grounds for your opinion, or medical literature; provide an attachment if |
| necessary):                                 |  |
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| reby declare under the penalty of perjury   | y that the foregoing is true and correct.  |
| cuted on:                                   |  |
|   | Surgeon Declarant's Signature  |