

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF INDIANA**
3 **SOUTH BEND DIVISION**

4 **IN RE: BIOMET M2a-MAGNUM CAUSE NUMBER**
5 **HIP IMPLANT PRODUCTS LIABILITY 3:12MD02391**
6 **LITIGATION**

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9 **MONDAY, APRIL 25, 2016**

10 **TRANSCRIPT OF PROCEEDINGS**
11 **BEFORE THE HONORABLE ROBERT L. MILLER, JR.**

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17 **DEBRA J. BONK**
18 **Federal Certified Realtime and Registered Merit Reporter**
19 **United States District Court**
20 **204 South Main Street - Room 323**
21 **South Bend, Indiana 46601**
22 **debra_bonk@innd.uscourts.gov**
23 **574-246-8039**

24
25 *Proceedings reported in machine shorthand. Transcript*
 produced by computer-aided transcription, Eclipse.

INDEX

TELEPHONIC APPEARANCES:

FOR PLAINTIFFS:

MR. NAVAN WARD

MS. BRENDA FULMER

MR. JUSTIN PRESNAL

MS. LINDSEY STEVENS

FOR BIOMET:

MR. JOHN WINTER

MS. ERIN HANIG

(see docket for addresses.)

1 **THE COURT:** Good afternoon.

2 This is Judge Miller.

3 We are gathered by telephone in our
4 Cause Number 3:12MD2391, which is MDL2391, **In Re: Biomet**
5 **M2a-Magnum Hip Implant Products Liability Litigation.**

6 We are gathered by telephone for our regularly-scheduled status
7 conference.

8 If I could ask you folks to state your appearances
9 for the record, please.

10 **MS. FULMER:** Brenda Fulmer, on behalf of the
11 Plaintiffs' Steering Committee.

12 **THE COURT:** Ms. Fulmer.

13 **MR. WARD:** Navan Ward, Navan Ward, on behalf of the
14 Plaintiffs' Steering Committee.

15 **THE COURT:** Mr. Ward.

16 **MR. PRESNAL:** And Justin Presnal, on behalf of the
17 Plaintiffs' Steering Committee.

18 Good morning, Judge. Good afternoon where you are.

19 **THE COURT:** Yeah, it's an afternoon here, but good
20 afternoon, Mr. Presnal.

21 **MS. STEVENS:** Good afternoon.

22 This is Lindsey Stevens, appearing on behalf of Ahmed
23 Diab, for the Plaintiffs' Steering Committee.

24 **THE COURT:** Okay. And I missed the name.

25 Could you say it one more time?

1 **MS. STEVENS:** Lindsey Stevens.

2 **THE COURT:** Ms. Stevens, okay.

3 **MS. STEVENS:** Thank you.

4 **THE COURT:** Anyone else on the Plaintiffs' side?

5 **(No response.)**

6 **THE COURT:** And for the Defense?

7 **MR. WINTER:** Good afternoon, Your Honor.

8 John Winter.

9 **THE COURT:** Mr. Winter.

10 Are you it?

11 It sounds like you are it.

12 **MR. WINTER:** I hope not. I hope not, Your Honor.

13 **THE COURT:** Well, we can wait a minute, see if -- are
14 you waiting for Mr. LaDue or Ms. Hanig?

15 **MR. WINTER:** Ms. Hanig, Your Honor.

16 **THE COURT:** Well, let's hold just a moment.

17 **MR. WINTER:** Your Honor, why don't we proceed. I've
18 sent an e-mail to Ms. Hanig, and she'll join shortly, I'm sure.

19 **THE COURT:** Okay.

20 **MS. HANIG:** I'm on, John. Sorry.

21 **THE COURT:** Okay. I have the agenda that you
22 proposed, and I will move right on down it.

23 Who wished to address on -- Note 1 or Item 1 was the
24 active case count with a subheading of: Order To Show Cause
25 Regarding Dismissal Of Funded Cases.

1 Who is going to speak to that?

2 **MR. WINTER:** If it's okay, Your Honor -- John
3 Winter -- I can address that.

4 **THE COURT:** Okay.

5 **MR. WINTER:** Your Honor, currently, there are 301
6 cases in the MDL and a very small number, a handful, of cases
7 that are sort of working their way through the process of being
8 tagged and sent to you. There are now, roughly, 26 cases in
9 five different state courts around the country.

10 To the order to show cause, Your Honor may recall, at
11 the last case management conference, as part of the agenda, we
12 provided a list of, roughly, 750 cases which Biomet had funded
13 at different points in 2015 and early in 2016 where we had all
14 of the appropriate release documentation and had put the money
15 into the Garretson escrow, which should have triggered
16 stipulations of dismissals being filed.

17 And, you know, for many reasons -- and probably
18 "inertia" may be the best word to use for why that hasn't
19 happened -- we would like to submit a proposed order to you,
20 which would have as an exhibit those lists of cases which
21 everyone has had, you know, on the Plaintiffs' Steering
22 Committee side and the Biomet side and on the docket because it
23 was part of the agenda from a prior case management conference,
24 to have an order be issued that, either you file your
25 stipulation of discontinuance by X day, you know, whether

1 that's 30 or 45 days from the date of your order, or the case
2 will be either deemed dismissed or some mechanism, which we'd
3 look to Your Honor for guidance, as to how we just, you know,
4 clear out the docket here for cases that, you know, we have
5 releases and we've paid.

6 **THE COURT:** Okay. Any response or objection from the
7 Plaintiffs' side?

8 **MS. FULMER:** Your Honor, Brenda Fulmer on behalf of
9 the Plaintiffs.

10 We don't have an objection to the proposal from the
11 Defense. We have the same interest in getting the docket
12 cleared of the settled cases, and the order to show cause may
13 be the most effective route for doing so.

14 **THE COURT:** Okay. Then I will invite Biomet to
15 submit that request, together with a list of the cases and the
16 proposed order to show cause, and I will get it out, and we'll
17 see what happens.

18 **MR. WINTER:** Thank you, Your Honor.

19 **THE COURT:** Thank you, sir.

20 Next, we have update on discovery. I see
21 meet-and-confer progress regarding supplementation of Biomet's
22 prior discovery responses.

23 Am I correct in assuming that's the one that we were
24 going to have the day-long hearing on? You're trying to work
25 your way through those?

1 **MR. WARD:** Yes, Your Honor. This is Navan Ward, and
2 you are correct.

3 As Your Honor recalls, in response to the Plaintiffs'
4 Steering Committee's meet-and-confer and/or request for
5 additional discovery from Plaintiffs' Steering Committee I,
6 their interrogatory requests for production and other discovery
7 that was requested early on, what the Defendants -- Plaintiffs
8 and Defendants got together and have been able to -- Defendants
9 have provided information, supplemental information, at least
10 they have indicated they will provide supplemental information,
11 for that discovery, based on our meet-and-confer, which we
12 expect to receive April 29th.

13 And since Your Honor had previously requested an
14 all-day meet-and-confer or all-day meeting to discuss some of
15 these issues, the parties felt it would be most effective to
16 not waste the Court's time and allow the Plaintiffs' Steering
17 Committee to look at the information that arrives on the 29th,
18 instead of meeting tomorrow, I guess, on the 26th of this
19 month, to discuss issues that, you know, may be irrelevant once
20 the Defendant provides their production of documents.

21 **THE COURT:** We couldn't hear the last part, Mr. Ward.
22 If you could, repeat the last part.

23 **MR. WARD:** Yes. I apologize.

24 Essentially, the parties felt that it would be best
25 for us to forego having the all-day meeting tomorrow to discuss

1 discovery issues, assuming that once we receive their
2 production, the Defendant's production, on the 29th, we will be
3 able to hopefully identify -- have many things answered that
4 will eliminate the need for our meet-and-confer or meeting we
5 were going to have tomorrow, and we'd be in a better position
6 to know how we'll need to move forward.

7 With the Court's having the every-two-week telephone
8 conferences, that would give us the ability to, if there are
9 any issues after receipt of the production on the 29th, to be
10 able to meet and confer and bring those issues up, if
11 necessary, at that point.

12 **THE COURT:** Okay. So that is in progress, and it
13 might come back here or it might not; is that the bottom line
14 on that?

15 **MR. WARD:** Yes, Your Honor.

16 **THE COURT:** Okay. Any additional or different view
17 from you, from the Biomet side?

18 **MR. WINTER:** No, Your Honor, other than, we had
19 actually sent, on Friday, part of the information that we told
20 the Plaintiffs' Steering Committee we would provide to them,
21 and the other part of the material is going to be sent out this
22 Friday.

23 **THE COURT:** Okay. Okay. Next, we have status of
24 case-specific discovery, and we've got subheadings: Statute Of
25 Limitations And Spoliation Cases, and then: The Group 1

1 Depositions.

2 Are we on track on those? I don't know who placed
3 this on the agenda, so I'll ask that question to whoever placed
4 it on the agenda.

5 **MR. WINTER:** I think -- this is John Winter.

6 I think we did, Your Honor, and the answer to your
7 question is: Yes.

8 All of the statute-of-limitation and spoliation cases
9 now have agreed upon Plaintiff deposition dates. We've taken
10 maybe 10 of the statute-of-limitation or eight of the
11 statute-of-limitation depositions already, and all of those
12 will be done such that any summary judgment motions can be
13 filed in accordance with your order.

14 All the Group 1 Plaintiff depositions have been
15 scheduled. Although, I think we may, meaning Biomet, have had
16 to like unilaterally send out notices for maybe three or four
17 or two or three of those cases, and we're in the process of
18 scheduling depositions of surgeons in the Group 1 cases.

19 **THE COURT:** Okay.

20 **MR. WINTER:** So that's all moving according to
21 schedule.

22 **THE COURT:** Okay. Thank you, sir.

23 Any additional perspective from the Steering
24 Committee's side?

25 **MR. WARD:** Yes, Your Honor.

1 This is Navan Ward.

2 From our perspective, everything is going according
3 to the scheduling order. The only caveat is that there are
4 some cases that have yet to receive their Defense fact sheets.
5 The Plaintiffs' Steering Committee has notified Defense of
6 those cases, as well as individual firms have also notified, to
7 my knowledge, Defendants of that, of whatever missing Defense
8 fact sheets, and Defense counsel has indicated they are working
9 to provide --

10 **THE COURT:** We missed the last part, Mr. Ward, if you
11 could repeat just the last part you said.

12 **MR. WARD:** Yes.

13 Defense counsel has indicated they're working to
14 expedite those missing Defense fact sheets in order to provide
15 to the Defense any of the Plaintiffs in Exhibit A, B, or on
16 Group 1 in sufficient enough time prior to the depositions that
17 are going to be occurring in those cases.

18 **THE COURT:** Okay. So, again, it sounds like we're
19 moving along, and nothing is needed from me at this point; is
20 that the bottom line?

21 **MR. WARD:** Yes, Your Honor.

22 **THE COURT:** Okay.

23 **MR. WINTER:** Yes, Your Honor.

24 **THE COURT:** Then we have: PSC Applications, with
25 subheadings: Escrow For PSC II And Timekeeping For Common

1 Benefit Fund.

2 I assume that these are Plaintiffs' -- the Steering
3 Committee's additions to the agenda?

4 **MS. FULMER:** Yes, Your Honor.

5 Brenda Fulmer, on behalf of the Plaintiff.

6 They might be a little bit premature to be on the
7 agenda. I had hoped, for this hearing, to have orders to
8 submit to the Court establishing the escrow account for some
9 newly settled cases that are subject to PSC Number II's common
10 benefit order, as well as an order on timekeeping.
11 Unfortunately, those are not ready yet, but they will be ready
12 before the next hearing, so we'll go ahead and submit those to
13 the Court once they are available.

14 I did meet with the Garretson firm, on Friday, with
15 regard to the process to be utilized for processing of recent
16 settlements that are subject to the new common benefit order.
17 And so once we work out the details of that, I'll be in a
18 position to submit an order to the Court.

19 **THE COURT:** Okay. So you propose just deferring,
20 tabling this one until the next conference?

21 **MS. FULMER:** Yes, Your Honor.

22 **THE COURT:** Okay. Any disagreement on that?

23 **MR. WINTER:** No objection, Your Honor, from Biomet.

24 **THE COURT:** Okay. I had one that I wanted to add.

25 We talked before about Biomet's objections to the

1 third-party subpoenas, and I know the PSC II wants a hearing.
2 I think what I -- I have been trying to approach this
3 informally, without motions to compel or motions or motions for
4 protective orders. But to give the third parties a chance to
5 be heard, I probably need a motion or motions for me to conduct
6 a hearing on it.

7 So unless somebody has a better idea, I guess,
8 Mr. Winter or Ms. Hanig, I would propose that you folks file a
9 motion to compel, and then the third party, as well as the
10 Plaintiffs' Steering Committee, can be heard, and I'll set a
11 hearing on it, obviously. I just simply can't think of any
12 other good way to get it in front of me with the third party
13 having a chance to be heard.

14 I guess I'll start with Biomet and see -- agree,
15 disagree, better idea, refinement? I'm open to anything.

16 **MR. WINTER:** Your Honor, John Winter.

17 My understanding, Your Honor, is the third-party
18 subpoenas that are an issue, for want of a better term, were
19 issued by the Plaintiffs' Steering Committee to third parties.
20 They're not directed to Biomet, nor are they Biomet-issued
21 subpoenas. So I think maybe the better course here is for the
22 PSC, who's, in fact, served the subpoenas, to file whatever
23 motion, and then the third party, who's filed their objections,
24 which everyone just saw, can then respond.

25 **THE COURT:** Okay. From the Plaintiffs' side?

1 **MR. WARD:** Yes, Your Honor. We don't have a problem
2 with proceeding in that manner.

3 This is Navan Ward.

4 **THE COURT:** Okay. So then I'll watch for a motion to
5 compel, and we'll set a hearing as quickly as we can and try to
6 get on it.

7 It seems to me I've run out of paper on the agenda.

8 Is there anything further? Obviously, we've got to
9 do some scheduling. Is there anything further for the
10 Plaintiffs' Steering Committee?

11 **MS. FULMER:** Yes, Your Honor.

12 This is Brenda Fulmer, on behalf of the Plaintiffs.

13 At the last status conference, you broached the
14 subject of how to deal with the pro se claimants.

15 **THE COURT:** Yes.

16 **MS. FULMER:** And so what the Plaintiffs' Steering
17 Committee has done since then, I sent a letter to all of the
18 pro se claimants. The Clerk's Office was nice enough to give
19 us a list of who they've identified as pro se claimants in this
20 MDL. So I wrote to all of those pro se claimants last week,
21 provided them with a list of attorneys who have cases pending
22 in the MDL in the off chance that they're still looking for
23 counsel to assist them, and I've also asked that they contact
24 our office within the next couple of weeks to let us know what
25 their intentions are with respect to continuing to prosecute

1 their claim. So I'm hoping, by the next status conference, we
2 might be able to give the Court some reliable information about
3 the pro se claimants, and, perhaps, some of those claimants
4 will also find counsel, if that's their desire, in the interim.

5 **THE COURT:** Okay. Thank you. That's good progress.
6 Anything further from the Plaintiffs' side?

7 **MS. FULMER:** No.

8 **THE COURT:** Or for Biomet?

9 **MR. WINTER:** No, Your Honor.

10 **THE COURT:** Normally, I'd be offering you folks two
11 weeks from today for the possibility of a discovery-related
12 issue. I'm surprised to discover I have three jury trials
13 starting that day, so I would prefer not to give you that day.

14 How about May 12th? That's a Thursday of that week,
15 so it would be about two-and-a-half weeks. And I guess I'd
16 propose 9:00 simply because I might still be in trial in one of
17 them. Obviously, if you can't do it, we'll adjust. But would
18 that date work for both sides? And this is the one that we'd
19 cancel if nobody needs a discovery discussion.

20 **MR. WINTER:** May 12 at 9:00 works for Biomet,
21 Your Honor.

22 **THE COURT:** All right.

23 **MR. WARD:** Your Honor, that also works for Plaintiff,
24 as well.

25 **THE COURT:** Okay. And I will show it simply as a

1 discovery hearing. And if none is needed, let us know, and we
2 will cheerfully vacate it.

3 We're going to start getting into some difficult
4 times here, I suppose. For our next conference, May 23rd, four
5 weeks from now, would that be earlier than we need? I can
6 offer you that, the 23rd of May, or June 6th. We could do the
7 23rd of May as another standby discovery conference and plan to
8 have a status conference on June 6th. That would be six weeks
9 from today, which feels a little long, but maybe it's not, if
10 we have those two interim dates.

11 **MR. WARD:** I think, Your Honor, with the interim
12 dates, I think June 6th would be fine and having May 23rd as
13 another discovery-issue date.

14 **THE COURT:** Does that sound good to Biomet?

15 **MR. WINTER:** Yes, Your Honor.

16 **THE COURT:** Okay. I'll show the pre-conference
17 hearing at 9:00 on the 6th and the -- I'm sorry. I'm trying to
18 write this down as I speak.

19 9:30 would be the conference itself. Again, if
20 there's nothing that requires in-person discussion, that's
21 fine. I'm happy to do it by phone. Just let us know.

22 On the 23rd, for our tentative discovery hearing,
23 would you prefer 1:00? I don't know which works better for you
24 folks.

25 **MR. WARD:** Well, actually, for the in-person hearing

1 on the 6th, is it possible, Your Honor, for us to do it as
2 we've done it before, allow people to fly in, in the morning,
3 to have the 1:00 --

4 **THE COURT:** Sure.

5 **MR. WARD:** -- conference, pre-conference, or actual
6 conference?

7 **THE COURT:** Yep.

8 So we'll make the 6th at 1:00 and 1:30, and we'll go
9 ahead and set the discovery conference, if it's agreeable from
10 Biomet's side, as well, for May 23rd at 1:00, and I'll show it
11 as a discovery hearing. And, again, if we don't need it, we
12 don't need it.

13 Does that work for Biomet?

14 **MR. WINTER:** That works for Biomet, Your Honor.

15 **THE COURT:** Okay. So our tentative discovery
16 hearings are 9:00 on May 12th and 1:00 on May 23rd, and our
17 next status conference will be 1:30 on June 6th, with the
18 pre-conference at 1:00. And, again, if there's nothing that
19 requires in-person discussion, I'll be happy to convert that
20 one to telephone, and we'll just scrap the 1:00 pre-hearing.

21 Anything else for the Plaintiffs' Steering Committee?

22 **MR. WARD:** Thank you, Your Honor. That will be it
23 from Plaintiff. Thank you.

24 **MS. FULMER:** No, Your Honor.

25 **THE COURT:** Anything else for Biomet?

1 **MR. WINTER:** No, Your Honor. Thank you very much.

2 **THE COURT:** Okay. Thank you for the progress you've
3 made since last we talked. It sounds like we're moving along,
4 so thank you very much.

5 **MS. FULMER:** Thank you, Your Honor.

6 **MR. WARD:** Thank you.

7 **(Proceedings concluded.)**

8 *******

9 **CERTIFICATE**

10 I, DEBRA J. BONK, certify that the foregoing is a true and
11 correct transcript from the record of proceedings in the
12 above-entitled matter.

13 DATED THIS 28th DAY OF APRIL, 2016.

14 S/S DEBRA J. BONK

15 DEBRA J. BONK
16 FEDERAL CERTIFIED REALTIME/REGISTERED MERIT REPORTER

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