

1 **THE COURT:** Good afternoon.

2 This is our Cause Number 12MD2391, also the Panel's
3 Docket Number 2391, **In Re: Biomet M2a Magnum Hip Implant**
4 **Products Liability Litigation.**

5 We are gathered for our regular status conference.
6 Plaintiffs' counsel, as I understand it, are on the phone.

7 So if I could ask you folks to state your appearances
8 for the record.

9 **MR. DIAB:** Good morning, Your Honor.

10 Ahmed Diab, on behalf of the Plaintiffs.

11 **THE COURT:** Mr. Diab.

12 **MR. PRESNAL:** Justin Presnal, also on behalf of the
13 Plaintiffs, Judge.

14 **THE COURT:** Mr. Presnal.

15 Anybody else?

16 **MR. PRESNAL:** I understand Mr. Ward -- I just got a
17 message from him that he just landed, on a delayed flight, and
18 may or may not be able to join us, but I'll let him know that
19 we've just started.

20 **THE COURT:** Okay. So we've got Mr. Diab and
21 Mr. Presnal.

22 And that's all we have for the -- I mean, obviously,
23 that's enough, but do we have more for the Plaintiff?

24 **(No response.)**

25 **THE COURT:** Okay. None appearing, those in court,

1 for the Defense, if you could state your appearances for the
2 record.

3 **MS. HANIG:** Erin Hanig, on behalf of Biomet.

4 **THE COURT:** Ms. Hanig.

5 **MR. WINTER:** John Winter, on behalf of Biomet, Your
6 Honor.

7 **THE COURT:** Mr. Winter.

8 **MR. LaDUE:** John LaDue, for Biomet.

9 **THE COURT:** Mr. LaDue.

10 Let me ask those who are in court if you could stay
11 close to microphones for the sake of the people listening.

12 Hello to all.

13 I have gone over the joint status conference agenda.
14 It's pretty general, so I don't know who wanted to speak to the
15 active case count.

16 **MS. HANIG:** I can do that, Your Honor.

17 **THE COURT:** Okay. Ms. Hanig.

18 **MS. HANIG:** So, active case count, right now, by
19 Biomet's count, we have 318 --

20 **COURT REPORTER:** Excuse me.

21 Could you get by a microphone, please?

22 **MR. DIAB:** Your Honor, this is Ahmed.

23 I apologize for interrupting, but we cannot hear
24 Ms. Hanig at all.

25 **MS. HANIG:** How about now?

1 **THE COURT:** Apparently not. I don't think that one's
2 on.

3 Maybe use the lectern, Ms. Hanig.

4 **MS. HANIG:** Okay.

5 **THE COURT:** It turns out the microphone on counsel
6 desk is not working.

7 **MS. HANIG:** How about now?

8 **COURT REPORTER:** I don't think it's on.

9 **(Discussion held off record.)**

10 **THE COURT:** Now try.

11 **MS. HANIG:** Now?

12 **COURT REPORTER:** (Nods head.)

13 **MR. DIAB:** Much better.

14 Thank you, Your Honor.

15 **THE COURT:** It turns out none of the microphones were
16 on.

17 Go ahead, Ms. Hanig.

18 **MS. HANIG:** Thank you.

19 So, currently, by Biomet's count, there are
20 approximately 318 cases that are pending, active, and
21 unsettled, on the docket. There are two, I can tell you, that
22 are recently filed in state courts that we believe will be
23 heading this way.

24 **THE COURT:** Okay.

25 **MS. HANIG:** And then the remaining cases that are

1 still on the docket are the subject of your order to show cause
2 a couple of weeks ago.

3 **THE COURT:** All right. Anything to add to that, from
4 the Plaintiffs' side? I don't know what there would be to add,
5 but this is your opportunity.

6 **MR. DIAB:** Nothing here.

7 **THE COURT:** Okay. Next on the agenda is update on
8 discovery, with four bullet points.

9 Who wants to speak first to that?

10 I see Mr. Winter is standing and moving to the
11 lectern.

12 Mr. Winter.

13 **MR. WINTER:** Your Honor, I'll handle the first two
14 bullet points.

15 On the statute-of-limitations cases, all of the
16 depositions have been taken, and there will be summary judgment
17 motions filed on June 28th, in accordance with your order, in
18 those cases. The original list was 19, Your Honor. At least
19 three of those cases, along the way, have been resolved, so the
20 number of summary judgment motions, I think, will be 15 or 14.

21 The parties are moving forward with the depositions
22 in the spoliation group of cases. Those cases, the depositions
23 have to be completed, I'm pretty sure, by the end of June, and
24 all have either been taken or are scheduled, and, later this
25 month, the parties will meet-and-confer to pick the 10

1 bellwethers that would be subject to summary judgment motions,
2 after a brief period of additional discovery, which you've
3 provided for, so those are moving on track.

4 With respect to the Group 1 depositions, there are
5 depositions of Plaintiffs that are ongoing, depositions of
6 surgeons that are ongoing, treating physicians, and sales
7 representatives, so the parties are, you know, working
8 collaboratively to arrange those depositions. Some are done.
9 Some are scheduled. But we're all working to stay within the
10 confines of your order on those cases.

11 **THE COURT:** All right. Who wishes -- anything from
12 the Plaintiffs to add to those reports?

13 **MR. PRESNAL:** The only comment I would add, Judge, is
14 I agree with Mr. Winter's description. These are moving
15 forward. And, so far, I just wanted to let you know that we
16 have not, at least as the PSC is concerned -- we've not heard
17 of any problems or conflicts or anything like that with the
18 depositions. They've all gone very smoothly, and the parties
19 worked together on scheduling and rescheduling on occasions
20 when conflicts come up.

21 **THE COURT:** Good. Glad to hear it.

22 Who's going to -- Ms. Hanig, you're going to address
23 unnumbered Bullet Points 3 and 4?

24 **MS. HANIG:** I'm going to address 3, and then
25 Mr. LaDue's going to address 4.

1 **THE COURT:** Okay.

2 **MS. HANIG:** So, on the Group 2 list, we had one case
3 off that list settle, which was **Michelle Snyder**, so we have
4 removed her and added the next pending case, which is
5 3:14CV1556, **Wilson and JoAnn Overall**. I sent that list to the
6 PSC earlier this morning, and I can submit that to you so we
7 can do an amended list for the next 50.

8 **THE COURT:** Okay. All right. Mr. LaDue.
9 I'll go to the Plaintiffs every other bullet point.
10 Mr. LaDue.

11 **MR. LaDUE:** Very good, Your Honor.

12 On the last bullet point, the PSC's request for
13 Biomet employees' depositions, these are the Biomet custodial
14 depositions that were mentioned in Paragraph 5 and 6 of your
15 scheduling order.

16 We've received -- Biomet's received two waves of
17 requests from the PSC. The first came on April 23rd. I think
18 there was about 16 or 17 people on that list. Eleven of those
19 folks are still employed by now Zimmer/Biomet.

20 Biomet offered deposition dates for those 11 folks at
21 the end of June, the last two weeks of June. The PSC agreed to
22 schedule three of those deps, but not the other eight, and
23 asked us for dates later in the summer, July, August,
24 September, for those other eight people.

25 On the 31st of May --

1 **THE COURT:** So that list is moving along?

2 **MR. LaDUE:** We've got three of them set for the 28th,
3 29th, and 30th of June. None of these depositions have been
4 taken yet. And then the other eight are being rescheduled, at
5 the PSC's request, for later dates.

6 On May 31st, we got another round of requests. This
7 time, for 18 folks. These are folks -- I guess, new
8 custodians. Many of them are new custodians, not part of the
9 original 67. As a result, Biomet's objected to a number of
10 those. I expect the parties will meet and confer on that, but
11 you may hear from us, again, on that second wave of requests,
12 Your Honor.

13 **THE COURT:** Okay. So the only problem with the first
14 wave is scheduling; the second wave, we're not to the
15 scheduling point yet?

16 **MR. LaDUE:** That's correct, Your Honor.

17 **THE COURT:** Okay. Thank you.

18 Anybody from the Plaintiffs' side wish to add
19 anything to the reports by Ms. Hanig and Mr. LaDue?

20 **MR. PRESNAL:** The only comment I would make, with
21 regard to the Biomet -- this is Justin Presnal, Judge -- with
22 the Biomet employee depositions, is we do appreciate the dates
23 being offered so quickly. They were offered on, more or less,
24 consecutive dates, in a period of time that included the 4th of
25 July holiday, and we just had a number of scheduling conflicts

1 and couldn't cover them all within that period of time, so we
2 made sure we -- these depositions were ordered to complete
3 before the end of September, so we just asked that they be
4 distributed among the following weeks so that we could arrange
5 coverage, appropriate coverage, from the folks that need to
6 cover those depositions.

7 **THE COURT:** Okay.

8 **MR. PRESNAL:** But it really just is a scheduling
9 issue, more than anything else, not a conflict.

10 **THE COURT:** Okay. All right. Then, next, we have
11 Item 3, with two bullet points. These are PSC applications,
12 and I assume I should start with the Plaintiffs on this one, on
13 these two.

14 Mr. Presnal or Mr. Diab.

15 **MR. DIAB:** Yes, Your Honor. This is Ahmed Diab.

16 As to the escrow and timekeeping for common benefit
17 fund -- first of all, Ms. Fulmer actually did call in. She's
18 having audio difficulties and wanted to extend her apologies
19 there -- but, as to those issues, the orders for both the
20 common benefit and escrow will be submitted in advance of the
21 next hearing, so I would anticipate getting that resolved at
22 that point in time, and that's the only thing we really have to
23 add on those issues.

24 **THE COURT:** Okay. So they are in progress, and you
25 would anticipate something before we gather again?

1 **MR. DIAB:** Yes, Your Honor. I believe we would have
2 that at least a week in advance.

3 **THE COURT:** Okay. I assume the Defense has nothing
4 to add on those?

5 **MR. WINTER:** No, Your Honor, other than, with the --
6 with the consent of PSC 2, there actually had been a small
7 number of cases that have been resolved that are subject to
8 that six percent, and we've processed them because the people
9 want their money, obviously, and we've reached an agreement
10 with the PSC that we will hold the six percent for any of those
11 settlements in the current Biomet escrow that exists pursuant
12 to one of your prior orders. And then once this new escrow and
13 all of those appendages to it are so ordered, whatever money is
14 sitting in escrow will move over, so just so you know what
15 we've agreed to as an interim gap filler.

16 **THE COURT:** Okay. Thank you.

17 Anything else that's not on the agenda for either
18 side?

19 **MR. DIAB:** Nothing for the Plaintiffs, Your Honor.

20 **THE COURT:** Anything for Defense?

21 **MS. HANIG:** No, Your Honor.

22 **THE COURT:** Okay. Let's try to do some scheduling
23 here. It becomes more challenging. Wow. I'm busy, it looks
24 like. Let's see. How about -- I start my jury trials, in the
25 summer, on the first day of the week, which is why it's a

1 little more difficult to find a date here. How about -- can
2 you do Thursday, July 14th, at 1:30? And I know it's summer.
3 I'm not asking anybody to give up vacation plans.

4 **MR. WINTER:** Your Honor, the evening of July 14th, I
5 have to be at a ceremony in the Southern District of New York.

6 **THE COURT:** Okay. How about -- well, how about 1:00,
7 on July 18th?

8 **MR. WINTER:** Your Honor, why don't we stick with the
9 14th, and I'll participate by phone.

10 **THE COURT:** Okay. Does the 14th work, as far as you
11 know? I hate to do this with missing counsel, but, as far as
12 you folks know, does that date work for you?

13 **MR. PRESNAL:** We think so, Judge. If there is a
14 problem that can't be overcome, we'll reach back out to you and
15 Mr. Winter and the others and see if it needs to be adjusted or
16 can be adjusted. We'll figure it out.

17 **THE COURT:** Okay. All right. Thank you.

18 I think it would probably be a good idea to put one
19 of our tentative discovery hearing settings between now and
20 then, and, if, like this time around, you don't need it, that's
21 wonderful.

22 How about 9:00, on June -- well, I guess I shouldn't
23 do that -- 1:30, on June 27th? And, again, this is one that
24 can be canceled. This is just the setting to address any
25 ongoing discovery issues.

1 I see a nod at the Defense table.

2 Does that date work for Plaintiffs, as far as we
3 know?

4 **MR. DIAB:** We're nodding on the phone.

5 **MR. PRESNAL:** I think that's fine, Judge.

6 **THE COURT:** Okay.

7 **MR. PRESNAL:** Yeah, we're nodding on the phone.

8 I think that works fine. And, again, if we do need
9 to have something and it won't work, for whatever reason, we'll
10 sort that out, but we'll figure out a way to make it work.

11 **THE COURT:** Okay. And I'll set that one -- well,
12 okay. We've got that date then.

13 So, the 27th is tentatively set for a discovery
14 conference. July 14th, at 1:30, for the next status
15 conference.

16 Anything further for Plaintiff or Plaintiffs?

17 **MR. DIAB:** Nothing here, Your Honor.

18 **THE COURT:** Anything further for the Defense?

19 **MS. HANIG:** No, Your Honor.

20 **THE COURT:** Okay. Thanks, folks.

21 **MR. DIAB:** Thank you, Judge.

22 **(Telephone call ended; Discussion held off record.)**

23 **THE COURT:** Oh, wait just a minute.

24 Mr. Diab, are you still there, or Mr. Presnal?

25 **(No response.)**

1 **LAW CLERK:** I can probably get Mr. Diab back on the
2 phone.

3 **THE COURT:** Okay. Why don't you do that.

4 **MR. WINTER:** Sorry, Your Honor.

5 **THE COURT:** That's okay.

6 **(Discussion held off record;**

7 **Telephone call placed to Mr. Diab.)**

8 **THE COURT:** I'll just say we're back on the record.

9 **MR. DIAB:** Hi. This is Ahmed.

10 **THE COURT:** Mr. Diab, this is Judge Miller. We're
11 back on the record.

12 As we broke, Mr. Winter indicated there was something
13 he wanted to add. I tried to catch you, but you and
14 Mr. Presnal were both gone. So I just wanted to get you back
15 on here and let Mr. Winter indicate what he wanted to raise.

16 **MR. DIAB:** Thank you, Your Honor. I apologize.

17 **THE COURT:** No, it's not your fault. Don't worry.

18 **MR. WINTER:** Mr. Diab, what we wanted to do is give
19 Judge Miller an update on some of the discussions we have had
20 with different lawyers regarding resolutions that have
21 occurred, resolutions that may occur. Obviously, we're not
22 going to disclose any specifics of any interactions with any
23 particular lawyer over any particular case, but we wanted to
24 give the Judge sort of a view as to how Biomet may see
25 resolution of some of the cases in this MDL over the next 90 to

1 120 days.

2 **MR. DIAB:** Very well.

3 **THE COURT:** And you want to do that ex parte?

4 **MR. WINTER:** We would do that privately with
5 Judge Miller.

6 **THE COURT:** Okay. Is that agreeable, Mr. Diab?

7 **MR. DIAB:** That's fine by us, Your Honor.

8 **THE COURT:** Okay. Thank you.

9 **MR. DIAB:** Thank you.

10 **MR. WINTER:** Thank you, Mr. Diab.

11 **(Proceedings concluded.)**

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