

1 TELEPHONIC APPEARANCES:

2 FOR PLAINTIFFS:

BRENDA FULMER

3 AHMED DIAB

JUSTIN PRESNAL

4

FOR BIOMET:

5 MR. JOHN WINTER

MS. ERIN LINDER HANIG

6 MR. JOHN LaDUE

7 (see docket for addresses.)

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1 **THE COURT:** Good afternoon.

2 This is Judge Miller.

3 This is our Cause Number 12MD2391, MDL Docket Number
4 2391, **In Re: Biomet M2a-Magnum Hip Implant Products Liability**
5 **Litigation.**

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

8 If I could have you folks state your appearances for
9 the record.

10 **MS. FULMER:** Good afternoon, Your Honor.

11 This is Brenda Fulmer, on behalf of the Plaintiffs'
12 Steering Committee.

13 **THE COURT:** Ms. Fulmer.

14 **MR. PRESNAL:** Justin Presnal, on behalf of the
15 Plaintiffs' Steering Committee, Judge.

16 **MR. DIAB:** Good afternoon, Your Honor.

17 Ahmed Diab, on behalf of the Plaintiffs' Steering
18 Committee.

19 **THE COURT:** Okay. Anybody else for the Plaintiffs?

20 **MR. DIAB:** I don't believe so, Your Honor.

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

22 **THE COURT:** I'm sorry?

23 **MR. DIAB:** No, Your Honor.

24 **THE COURT:** Okay. And for the Defendant?

25 **(No response.)**

1 **THE COURT:** Have we lost the Defendant?

2 **MR. WINTER:** Good afternoon, Your Honor.
3 John Winter.

4 **THE COURT:** Mr. Winter.

5 **MS. HANIG:** Erin Hanig and John LaDue.

6 **THE COURT:** Ms. Hanig and Mr. LaDue, okay.

7 I have your agenda. Let me start at the bottom.

8 We had hoped to get rulings out on the motion to
9 remand and the motion to enforce settlement agreement, those
10 two motions. We've had kind of an MDL landslide here with 20
11 separate fairness hearings conducted at the beginning of last
12 week or a week before last and so we focused on the summary
13 judgment motions and didn't leave ourselves enough time to do
14 all of those plus the remanded motion to enforce. I hope to
15 have those rulings out for you within the next week, but I've
16 been trying to stay just ahead of the conferences and couldn't
17 quite make it this time.

18 On the active case count, Ms. Hanig, is that yours,
19 again?

20 **MS. HANIG:** Yes, that is me, Judge.

21 So, the active count is 228 cases, and that includes
22 three that were just moved in by conditional transfer order
23 yesterday.

24 **THE COURT:** Okay. And who wants to -- I assume the
25 Plaintiffs have no disagreement with that?

1 **MS. FULMER:** Your Honor, I believe that's correct.

2 **THE COURT:** Okay. The discovery update.

3 **MS. HANIG:** So, Your Honor, Erin Hanig, again.

4 From the Defendant's end, Your Honor, Group 3
5 discovery is underway. All of the Plaintiffs' Group 3
6 depositions, for the most part, are scheduled. We are in the
7 process of now scheduling surgeon depositions on behalf of
8 Biomet, of implanting and revising surgeons, and the process is
9 moving along smoothly.

10 **THE COURT:** Okay. From the Plaintiffs' standpoint?

11 **MS. FULMER:** Your Honor, I don't believe that the
12 Plaintiffs are having any issues at this time. The Group 3
13 discovery is moving along well.

14 **THE COURT:** Okay. Ms. Fulmer, I'm having trouble
15 hearing you. I don't know if there's any way to increase the
16 volume, but, if you could, it would be helpful.

17 Proposed Group 4 discovery.

18 **MS. FULMER:** Your Honor, this is Brenda Fulmer, on
19 behalf of the Plaintiffs.

20 We've met and conferred with Biomet with regard to
21 Group 4 discovery, and I believe that we now have an agreed-to
22 list of the cases that should be activated in the next wave. I
23 believe that list includes 44 cases.

24 **THE COURT:** Okay. Have you folks talked about the
25 dates in which that discovery would be -- I'm sorry. I moved

1 toward the speaker and away from my microphone.

2 Have you folks discussed the dates that discovery for
3 those 44 cases would begin and end or are you still just
4 working your way toward that?

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

6 We actually haven't finalized what the dates would
7 be, but I think both sides' expectation is that, when we submit
8 the Group 4 list, the dates, you know, that you have entered
9 for Groups 1, 2, and 3, in terms of timing, would apply, and we
10 would just, you know, calendar it accordingly.

11 **THE COURT:** Okay. All right. Then I will --

12 **MS. FULMER:** Your Honor, that's correct.

13 The Plaintiffs -- I'm sorry.

14 **THE COURT:** Go ahead.

15 **MS. FULMER:** I'm sorry, Your Honor.

16 The Plaintiffs assumed that the order would likely be
17 entered in late March or early April and that would be the
18 triggering point for the Group 4 discovery dates.

19 **THE COURT:** I'm sorry. Could you repeat that? I
20 wasn't able to pick it up.

21 **MS. FULMER:** I'm sorry, Your Honor.

22 The Plaintiffs assumed that the Group 4 scheduling
23 order would probably be entered shortly after this hearing,
24 either in late March or early April, and so all of the dates
25 would then fall in line after that entry of the order, you

1 know, consistent with what was done with Groups 1, 2 and 3.

2 **THE COURT:** Okay. I will stay out of your way today
3 then.

4 General expert discovery.

5 I do have the -- I have the Plaintiffs' Executive
6 Committee's generic expert disclosure with three names that was
7 filed on the 23rd of February.

8 Do I have -- where do we stand?

9 I know the depositions are supposed to take place
10 starting next week and going on for a month.

11 Do you have any further report on that?

12 **(No response.)**

13 **THE COURT:** No, okay.

14 **MR. WINTER:** Your Honor, Biomet served its experts'
15 reports on Friday, pursuant to the CMO from sometime back, I
16 think, in 2016, and we're proposing dates, so I think all the
17 expert discovery is moving forward in accordance with your
18 orders.

19 **MR. PRESNAL:** Judge, this is Justin Presnal, just to
20 add on a case Ms. Fulmer dropped off.

21 The same day that we filed our designation, we
22 provided expert reports to Biomet. The depositions of all of
23 the Plaintiffs' generic experts have been scheduled for later
24 this month and early part of May. Those have all been done,
25 and, as John suggested, we are now working back and forth with

1 them on dates for their experts, so all of that is going at
2 pace.

3 **THE COURT:** Okay. Sounds like things are going well.

4 Did anybody have any additional comment on the
5 general expert discovery or on the pending motions?

6 I know I kind of preempted everybody and pending
7 motions, but if there's something someone wanted to add on
8 that, I'm happy to listen.

9 **(No response.)**

10 **THE COURT:** Anything else for the good of the order
11 that didn't make it onto the agenda?

12 Anything for the Plaintiffs' Steering Committee,
13 Mr. Presnal or Mr. Diab?

14 **MR. PRESNAL:** Not at this time, Judge. We think that
15 covers it.

16 **THE COURT:** Oh, I'm sorry.

17 Are you still there, Ms. Fulmer?

18 **MS. FULMER:** Yes, I am, Your Honor.

19 The only question, one of the items that came to mind
20 this morning that's not on the agenda is the hearing with
21 regard to the pro se Plaintiffs.

22 Is it still the Court's intention to proceed with
23 that hearing on April 24th --

24 **THE COURT:** Yes, it is.

25 **MS. FULMER:** -- at 1:30?

1 **THE COURT:** Yeah, that is the plan.

2 I think we would have a difficult time rescheduling
3 that, so, because of that, although there will be a jury trial
4 going on in my courtroom, my current plan is to hold it in the
5 magistrate judge's courtroom. I can't remember if you folks
6 have been in there, but it's probably the smallest MJ courtroom
7 you will ever see, but it should be able to accommodate us. Of
8 course, the trial may go out, and we may be in third floor
9 courtroom again. But I think it will be very difficult to move
10 that, given the notice that's been sent out to the pro se
11 Plaintiffs.

12 Did that answer the question that you had, ma'am?

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

14 **THE COURT:** Okay. Anything further for the
15 Defendants?

16 **MR. WINTER:** Your Honor, there's been a number of
17 resolutions and problems --

18 **(Garbled telephone connection.)**

19 **THE COURT:** Mr. Winter, could you repeat the
20 beginning of that? We had some garbled --

21 **MR. WINTER:** Sure.

22 Your Honor, there's been a number of resolutions and
23 money going into escrow and out of escrow over the past 60 days
24 or so. We're, in the next 30 days, going to try to catch up to
25 make sure that dismissals with prejudice for all those cases

1 get filed so that the docket stays clean.

2 **THE COURT:** Okay. I assume that would be among the
3 228 cases that Ms. Hanig mentioned or are you already counting
4 those as inactive?

5 **MR. WINTER:** We're already counting those as inactive,
6 Your Honor.

7 **THE COURT:** All right.

8 **MR. WINTER:** So, the 228 is what is pending as of now,
9 backing out resolutions where releases and money have flowed.

10 **THE COURT:** All right. We are scheduled to be
11 together on Monday, the 24th of April, at 9:30 (sic).

12 Would it be helpful to use that as a date for status
13 conference after we hear from the pro se Plaintiffs or did you
14 want a different date?

15 My inclination would be to set it a little later that
16 morning or even that afternoon, since somebody will be here.
17 On the other hand, if you would rather do it a different date,
18 I'm open to that.

19 Any preference from the Plaintiffs' standpoint,
20 Ms. Fulmer or Mr. Presnal?

21 **MS. FULMER:** Your Honor, certainly since none of the
22 Plaintiffs are local in South Bend, we would certainly prefer
23 March (sic) 24th for the next status conference, if that's
24 possible.

25 **THE COURT:** You mean April 24th?

1 **MS. FULMER:** I'm sorry. April 24.

2 **THE COURT:** Okay. And any preferences for the
3 Defense?

4 **MR. WINTER:** April 24th works for us, Your Honor.

5 **THE COURT:** Okay. Then we'll show today that the
6 next status conference is set to begin after the pro se
7 hearings currently set for 9:30 a.m. (sic) on April 24th.

8 It sounds like you folks are moving along very well,
9 and I very much appreciate how well you folks are working
10 together. We're going to be spoiled here.

11 Just a moment.

12 **(Discussion held out of stenographer's hearing.)**

13 **THE COURT:** I'm sorry. I said 9:30, and the pro se
14 hearings are at 1:30, so I misspoke.

15 Okay. Thank you, folks. I'll see you next month.

16 **(Proceedings concluded.)**

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