

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

In re: BIOMET M2A MAGNUM )  
HIP IMPLANT PRODUCTS LIABILITY ) CAUSE NO. 3:12-MD-02391  
LITIGATION (MDL 2391) )  
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PLAINTIFFS' STEERING COMMITTEE'S MOTION TO MODIFY  
CASE MANAGEMENT ORDER NO 3. REGARDING  
PLAINTIFFS' ORGANIZATIONAL STRUCTURE

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Co-Lead Counsel and the Plaintiffs Steering Committee (collectively hereinafter "PSC II"), on behalf of all Participating Counsel and Plaintiffs in the *Biomet M2A Mangum Hip Implant Products Liability Litigation*, respectfully move the Court to modify Case Management Order No. 3 (Dkt. 2909, May 27, 2015) as follows: (1) Appoint a Plaintiffs' Executive Committee consisting of PSC II members Navan Ward, Brenda Fulmer, Justin Presnal, and Ahmed Diab; (2) Terminate the appointment of John Fiske; and (3) Terminate the PSC II appointment of Altom Maglio.

**I. Background**

The Court's order of May 27, 2015 comprehensively and accurately sets forth the history of Plaintiffs' leadership in this MDL proceeding. For the most part, PSC II has no objection to the Court's order, but respectfully requests that

the Court modify its order to create a Plaintiffs' Organizational Structure that PSC II believes will facilitate the most efficient means of managing this MDL.

## **II. Proposed Organizational Structure**

### **A. Plaintiffs' Executive Committee**

The Court entered an order on December 5, 2012, outlining the organizational structure for Plaintiffs' counsel for what the Court and others have come to call "PSC I." That order created both a Plaintiffs' Steering Committee and a Plaintiffs' Executive Committee, among other things. The Court's recent order appoints a new steering committee - PSC II - but does not establish a Plaintiffs' Executive Committee.

Co-Lead Counsel Mr. Ward and Ms. Fulmer, along with the other members of PSC II, believe that appointing a Plaintiffs' Executive Committee will assist them in more efficiently managing this litigation. PSC II respectfully requests that the Court modify CMO 3 to appoint a Plaintiffs' Executive Committee (PEC II) consisting of Mr. Ward, Ms. Fulmer, Mr. Presnal, and Mr. Diab.

### **B. Mr. Fiske's and Mr. Diab's appointments.**

CMO 3 appointed both Mr. Diab and Mr. John Fiske, both of Gomez Trial Attorneys in San Diego, California, to leadership positions in PSC II. The Court invited Mr. Diab and Mr. Fiske to elect which of them would serve as Liaison

Counsel, and advise the Court and Biomet's lead counsel of that election by June 15.

In discussions following the entry of CMO 3, PSC II does not believe it is necessary for both Mr. Diab and Mr. Fiske to be appointed to PSC II. Mr. Diab will continue to serve, and is requesting that he be appointed to PEC II since he will be involved in the day-to-day activities of this MDL.

With respect to the appointment of a Plaintiffs' Liaison Counsel, PSC II believes that the duties of a Liaison Counsel can be fulfilled by the members of PEC II directly without the necessity of a specified Plaintiffs' Liaison Counsel. However, if the Court prefers that someone serve in that role for the Plaintiffs', Mr. Diab is willing to do so.

**C. Mr. Maglio's PSC II appointment.**

CMO 3 also appointed Altom Maglio of Maglio Christopher & Toale, PA as a member of PSC II, noting that Mr. Maglio was counsel in a number of remaining cases. On June 4, 2015, Mr. Maglio filed an Application for Withdrawal from PSC II, stating prior commitments in other matters would preclude him from adequately serving on PSC II. The Court has not yet ruled on his application.

In addition to the concerns Mr. Maglio expressed in his Application for Withdrawal, Mr. Maglio withdrew from several of his cases currently pending in this MDL, and Mr. Diab substituted in as lead counsel in those matters.

For these reasons, PSC II supports Mr. Maglio's Application for Withdrawal of his appointment to PSC II and requests that the Court terminate his appointment.

### **III. Conclusion**

For the reasons explained in this motion, PSC II respectfully requests that the Court modify CMO 3 as follows:

1. Appoint a Plaintiffs' Executive Committee consisting of Navan Ward, Brenda Fulmer, Justin Presnal and Ahmed Diab.
2. Appoint Mr. Diab as a member of PSC II and terminate the appointment of John Fiske.
3. If the Court desires to appoint a Plaintiffs' Liaison Counsel, that Mr. Diab be appointed in that capacity.
4. Terminate Altom Maglio's appointment as a member of PSC II.

Dated: June 15, 2015

Respectfully submitted,

/s/ Navan Ward Jr.

Navan Ward Jr.

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*Plaintiffs' Co-Lead Counsel  
on behalf of the Plaintiffs' Steering  
Committee (PSC II)*

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2015, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which provided electronic service upon all counsel of record.

/s/ Navan Ward Jr.

Navan Ward Jr.