

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-2391  
LITIGATION (MDL 2391) )  
)  
This Document Relates to: All Cases )

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PLAINTIFFS' EXECUTIVE COMMITTEE'S PROPOSED  
MDL SCHEDULING ORDER

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Co-Lead Counsel and the Plaintiffs Executive Committee (collectively hereinafter "PEC"), on behalf of all Participating Counsel and Plaintiffs in the *Biomet M2A Mangum Hip Implant Products Liability Litigation*, respectfully submit this Proposed MDL Scheduling Order as requested by the Court at the September 3, 2015 status conference. The PEC's proposed scheduling order is attached as Exhibit A.

The PEC previously submitted their Position Statement regarding the management of this MDL. The PEC's scheduling order proposes a pretrial schedule utilizing the Court's December 10, 2013, Scheduling Order as a template where appropriate, but also taking into consideration the post-Master Settlement Agreement ("MSA") status of this MDL, including the relatively small number of cases that remain, the length of time that cases have been pending, the limited

resources available, and the fact that case-specific causation issues predominate in the cases that were not settled under the MSA and remain pending in this MDL.

The PEC's proposed scheduling order utilizes a "first in / first out" methodology for selecting cases for case-specific discovery, so that the oldest cases remaining can be prepared for trial first. The PEC has suggested an initial pool of 25 cases ("Group 1"), with a second pool of the next oldest 25 cases ("Group 2") to be activated for case-specific discovery and then remanded for trial on a rolling basis. After the Group 1 cases are remanded, the PEC suggests that the rolling case-specific discovery and remand orders may need to be altered to include more than 25 cases, so that the remaining cases can proceed to trial in a timely manner.

Dated: September 17, 2015

Respectfully submitted,

/s/ Navan Ward Jr.

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*Plaintiffs' Executive Committee*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 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.

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**[PEC's PROPOSED] SCHEDULING ORDER**

1. In all cases in which an answer was filed more than 90 days before the date of this order, amendments to the pleading shall be closed 90 days from the date of this order. In all other cases, amendments to the pleading shall be closed either 90 days after the answer is filed or 90 days after the case is opened in this district.

2. To facilitate prompt resolution of discovery-related issues:

a. I will hear and resolve by telephone disputes arising during depositions that can't be resolved by agreement and that will, if not resolved immediately, significantly disrupt the discovery schedule or require a rescheduling of the deposition. If I am not available while the deposition is being taken, the dispute may be submitted to Magistrate Judge Christopher Nuechterlein as he might direct. The presentation of the issue and the ruling will be recorded as part of the deposition.

b. As to disputes regarding production of documents or the propriety of a particular deposition, the parties may file a joint memorandum, not to exceed 10 pages, of the disagreements that remain after meeting and conferring about the dispute and setting forth the relief requested by each side. No further formal motion will be required, though this provision might change if either side appears to be taking positions for which Federal Rule of Civil Procedure 26 or 37 would require sanctions. If I can rule quickly without argument, I will do so. Otherwise, I will (a) arrange a telephonic hearing on the dispute within a week or so, (b) place the dispute on the agenda for the next periodic status conference, or (c) refer the dispute to Magistrate Judge Nuechterlein for prompt resolution with or without argument as he sees fit.

3. Statute of Limitations. Within 30 days after the date of this order, Biomet shall submit to the Court and the PSC a list of the cases pending in this MDL it contends are subject to a statute of limitations defense. Within 30 days after Biomet submits the list, Biomet and the PSC shall meet and confer regarding a proposed plan and schedule for the Court to consider statute of limitations issues.

4. By **November 2, 2015**, Biomet shall certify the production of Custodian Files for the 67 custodians referenced in the December 10, 2013 Scheduling Order.

5. By **December 4, 2015**, Biomet shall (a) complete its document production with respect to pre-2009 documents, and (b) complete its document production.

6. By **January 15, 2016**, the PSC shall provide an initial list of requested deponents from the 67 custodians, in order of priority. The PSC shall complete the depositions of the persons on the initial list by **June 17, 2016**.

7. By **May 13, 2016**, the PSC shall provide a supplemental list of requested deponents from the 67 custodians, in order of priority. The PSC shall complete the depositions of the persons on the supplemental list by **October 14, 2016**.

8. Biomet shall provide privilege logs on a rolling basis in compliance with the court's case management orders, with the last privilege log to be served no later than **March 4, 2016**.

9. By **January 15, 2016**, the court shall activate a pool of 25 cases for case-specific discovery based on the date of filing, starting with the earliest-filed case in 2012 ("Group 1"). Group 1, however, shall not include any cases where the plaintiff is currently proceeding *pro se* or where there is a pending motion for

withdrawal of plaintiff's counsel. Completed and updated Plaintiff Fact Sheets and medical records authorizations for the Group 1 cases shall be provided to Biomet by **January 15, 2016**.

10. The parties may engage in case-specific discovery relating to the Group 1 cases until **October 14, 2016**. Such discovery may include interrogatories, requests for production, requests for admission, and depositions of (a) the plaintiffs, (b) the implanting surgeon, (c) the revising surgeon, (d) the Biomet representative who sold the product, (e) separate Biomet representatives (if any) who were present in the operating room during the implant surgery or revision surgery, and (f) one additional fact witness per side (if any).

11. The PSC shall submit its general (i.e. non-case-specific) expert reports, with deposition dates for all such experts, by **January 13, 2017**. Biomet shall submit its general expert reports, with deposition dates for all such experts, by **February 10, 2017**. Depositions of experts may begin on **February 13, 2017**, and shall be completed by **April 14, 2017**.

12. The court will issue orders by **June 2, 2017**, remanding the Group 1 cases for trial in an appropriate venue, consistent with Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998).

13. By **October 14, 2016**, the court shall activate a second pool of 25 cases for case-specific discovery based on the date of filing, starting with the

earliest-filed case that comes after the Group 1 cases. Group 1, however, shall not include any cases where the plaintiff is currently proceeding *pro se* or where there is a pending motion for withdrawal of plaintiff's counsel. Completed and updated Plaintiff Fact Sheets and medical records authorizations for the Group 1 cases shall be provided to Biomet by **October 14, 2016**.

14. The parties may engage in case-specific discovery relating to the Group 2 cases until **July 15, 2017**. Such discovery may include interrogatories, requests for production, requests for admission, and depositions of (a) the plaintiffs, (b) the implanting surgeon, (c) the revising surgeon, (d) the Biomet representative who sold the product, (e) separate Biomet representatives (if any) who were present in the operating room during the implant surgery or revision surgery, and (f) one additional fact witness per side (if any).

15. The court will issue orders by **September 2, 2017**, remanding the Group 2 cases for trial in an appropriate venue, consistent with Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998).

SO ORDERED.

ENTERED: \_\_\_\_\_

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