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May 7, 2015

RECEIVED

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The Honorable Robert L. Miller, Jr.  
325 Robert A. Grant Courthouse  
204 South Main Street  
South Bend, IN 46601

U.S. District Court  
Judge Miller's Chambers  
SOUTH BEND, INDIANA

RE: *Sophia Adams v. Biomet Orthopedics, Inc., et al.*  
Docket No.: OKND 4:14-cv-00169-TCK-P JC r  
*IN RE: BIOMET M2a MAGNUM HIP IMPLANT PRODUCT LIABILITY LITIGATION*  
*(MDL 2391)*

Dear Judge Miller,

We represent one plaintiff only in the Biomet MDL, and I also feel compelled to inform the Court, as have others, regarding what I believe to be the failure of Biomet to fulfill its obligations under the terms of the Master Settlement Agreement. I have been involved on behalf of plaintiffs in a number of other failed medical device cases which were resolved through the MDL process. In all of those cases a rational process for resolving contested claims was created and followed. I cannot say that with respect to the way the settlement agreement in the Biomet litigation has been carried out. It has instead been overly simplistic and wholly arbitrary.

In our case, which was contested, we finally did get a mediation scheduled, although it was much more difficult than it should have been and we were discouraged from seeking mediation repeatedly by being told that it would not make any difference.

I traveled from Oklahoma to Philadelphia on February 12, 2015, fully expecting to engage in a meaningful mediation of the issues involved in our case. I provided the mediator and the Biomet attorney a six page mediation statement dealing in great detail with the three bases upon which Biomet had made its decision to treat our case as a category 2 claim with a compromised reduced settlement amount of only \$20,000.00. Those three bases were: (1) our client's prosthesis failure was caused by trauma, (2) she also had an infection in her hip joint, and (3) there was no evidence of metallosis in the records. Our mediation statement in great detail and with compelling medical evidence, soundly refuted those claims by Biomet. I have enclosed a copy of this statement for the Court's consideration. I naively thought the evidence was so persuasive that it would perhaps obviate the need for mediation and stated as much in my mediation statement / letter to John Winter, Biomet's attorney and Thomas

Rutter, the mediator. Neither Mr. Winter nor the mediator responded, and Biomet submitted no written mediation statement or made any kind of written comment upon the evidence we submitted in support of our claim. Nevertheless, I did expect to engage in meaningful mediation of our claim or I would never have traveled to Philadelphia. I'm sorry to say it, and I don't know how else to put it, but the mediation was a sham. I painstakingly went through all of the evidence we had pulled from our client's medical records which refuted the baseless claims by Biomet that our client's revision surgery was necessitated by trauma, that she had an infection in her hip joint which caused the implant to fail, and that there was no evidence of metallosis in her case. The mediator appeared to listen, although he did act somewhat impatient that I made such a detailed and fact-laden argument, but all I ever heard from Biomet's attorney was the same three words which were, "We don't agree." Although I tried numerous ways to get either the mediator or Biomet's attorney to engage in a rational discussion of the issues and the points I had made, they were either unable or unwilling to do so. After listening for some time to my arguments, and failing himself to get any meaningful response from Biomet's attorney, and also because he appeared to sense my growing frustration, the mediator asked Biomet's attorney to retire to an adjoining room.

When just the two of us were together, the mediator informed me that I was wasting my time because in his previous mediations with other plaintiffs in Biomet, only a few had resulted in any offers from Biomet greater than the \$20,000.00 our client had been offered, and none had exceeded \$30,000.00. I told the mediator it was obvious to me that Biomet was not negotiating in good faith and that I thought it was his job to confront them with that fact. I do believe that my challenge to the mediator to frankly "do his job" did make a difference. Although I never had the satisfaction of hearing anything, directly from Biomet's attorney or through the mediator, regarding the evidence we had presented, we finally were offered the grand total of \$50,000.00 to settle our claim, which our client felt she had to accept given other circumstances she was facing.

I recognize that it will be easy for defense counsel to respond to this complaint by simply pointing out that they are not required to concede any issues in dispute, and that there was simply no "meeting of the minds" regarding the facts of the case. That much is true, but real mediation of any dispute does require a good faith attempt to resolve the dispute on some rational basis, which did not occur in this case because defense counsel refused to become engaged.

As our client has accepted the \$50,000.00 settlement offer made by Biomet we have chosen not to file any further pleadings in the case seeking additional relief, but I felt obligated to inform the Court of our experience under the Settlement Agreement as it has been carried out by Biomet and the Plaintiffs' Steering Committee. We are left to wonder, as others have suggested, whether or not our seeking an enhancement for our client, although justified, was a mistake. We certainly hope our decision to seek enhancement was not the reason our client's claim was treated the way it was.

We are providing Biomet counsel, John Winter, and co-lead Plaintiffs' counsel, Thomas Anapol, a copy of this communication.

Sincerely,

A handwritten signature in black ink, appearing to read "M. David Riggs". The signature is fluid and cursive, with a long horizontal stroke at the end.

M. David Riggs  
FOR THE FIRM

MDR/sdk

Enc.

cc: John Winter, Esq.  
Thomas Anapol, Esq.