

1 **THE COURT:** Good afternoon. Welcome.

2 This is our Cause Number 12MD2391, the Panel's Number
3 2391, **In Re: Biomet M2a-Magnum Hip Implant Products Liability**
4 **Litigation**, and we are gathered to see where we stand on the
5 pro se matters.

6 I understand we have one person here in response to
7 the order that went out. Let's get ourselves down to date
8 before we hear from him.

9 On January 31st -- let me tell you what I see as our
10 record here. On January 31st, we dismissed nine cases, and
11 there was a tenth on the list that was subject to the
12 December 14th order. That was **Dishman versus Biomet**. We
13 didn't -- I'm sorry. It was not included on the original list
14 because there was a settlement that we don't -- the case still
15 shows as pending.

16 Three of the Plaintiffs, Mr. Gronning, Mr. Oswald,
17 and Mr. and Mrs. Peeples, found new attorneys so we vacated the
18 order.

19 Were any -- we do have one unusual situation. I'll
20 save that until the end.

21 As I understand it, Ms. Fulmer, you received
22 declarations of causation and declarations of intent in the
23 case involving Marshall and Faye Babcock and Donald Eastman?

24 **MS. FULMER:** That's correct, Your Honor.

25 **THE COURT:** Okay. And I guess I haven't had you

1 folks state your appearances for the record. We should start
2 there. I think I know you by face, but --

3 **MS. FULMER:** Brenda Fulmer on behalf of the
4 Plaintiffs.

5 **THE COURT:** Ms. Fulmer.

6 **MS. HANIG:** Erin Hanig on behalf of the Defendants.

7 **THE COURT:** Ms. Hanig.

8 **MR. WINTER:** John Winter on behalf of the Defendant.
9 Good afternoon, Your Honor.

10 **THE COURT:** Mr. Winter.

11 **MR. LaDUE:** And John LaDue for the Defendants, Your
12 Honor.

13 **THE COURT:** Mr. LaDue.

14 That leaves us with three cases -- well, four, I
15 guess, and we can go ahead and start with --

16 I'm sorry, sir. I don't know how to pronounce the
17 last name.

18 **MR. JARQUIO:** "Jarquio."

19 **THE COURT:** "Jarquio."

20 If you want to come up -- and you are?

21 **MR. JARQUIO:** Roland Jarquio.

22 **THE COURT:** Roland Jarquio.

23 If you want to come on up to the lectern here.

24 **MR. JARQUIO:** (Complies.)

25 **THE COURT:** For the record, Mr. Jarquio contacted

1 chambers, indicated that his parents could not travel. I
2 entered an order saying he couldn't represent them here because
3 he's not an attorney but he can tell us what's going on.

4 So what's going on, sir?

5 **MR. JARQUIO:** Sure.

6 Well, back in -- when the master service agreement
7 was issued, my mother's attorneys wrote her a letter
8 explaining -- outlining the master service agreement and, based
9 on their understanding of the reading, estimated to her in
10 writing that it would be the base 200 settlement, minus 10
11 because it fell within the five- to eight-year range for
12 revision.

13 And, subsequent to that, they somehow figured out
14 that the component in question was a ringlock model so it
15 wasn't the main model that was being settled for, and that was
16 valued at a lot less. So when they came back and said, "It's
17 actually not 190. It's 20," you can imagine. My mother's, you
18 know, a little old lady in pain, and she's making decisions
19 based on how she feels, not because she knows anything about
20 mass tort litigation or anything like that. So the lawyers
21 made it clear to her that, "It's your decision; you can opt in
22 or out;" and, without hesitation, she opted out.

23 Unbeknownst to me for, I guess, a while, she started
24 receiving all the paperwork that was coming from the litigation
25 from the courts, and, of course, she didn't understand most of

1 it, and so it sort of piled up.

2 Christmastime, I realized there was this pile of
3 papers, so I spent probably three-and-a-half hours going
4 through every last one of the documents and realized that there
5 was an opportunity to -- well, there was a Lone Pine order
6 issued and that she would have to meet certain hurdles in order
7 to keep her case alive, so I decided to try to meet those
8 hurdles so that we could buy her more time to, perhaps, find an
9 attorney or to, perhaps, reopen a discussion about settlement
10 because I don't think she fully understood what was on the
11 table at the time.

12 So I had her sign the declaration of intent to
13 proceed. I approached her surgeon multiple times with, you
14 know, the declaration and all the medical records to make it
15 easier for him to oblige, but I found out, you know, last
16 minute, that, of course, he didn't meet that deadline and that
17 I had to get on a plane and get out here pretty quickly.

18 And so that's why I'm here.

19 **THE COURT:** And, again, as I understand it, then, she
20 is hoping either to reopen discussions with Biomet about a
21 settlement or to retain an attorney?

22 **MR. JARQUIO:** Correct.

23 **THE COURT:** Do you know what efforts -- any efforts
24 she's made, as far as hiring an attorney?

25 **MR. JARQUIO:** Yes.

1 So, they definitely -- they received the list of
2 attorneys. They've gone through a number of names on the list.

3 I started, you know, in the last several weeks,
4 starting to call, but, of course, you know, some of those were
5 in discussion, as of, you know, last week, and haven't had any
6 luck so far.

7 And so I thought the best thing to do would be to
8 appear to make sure she doesn't get dismissed with prejudice
9 and buy a little bit more time so that we can either find
10 counsel or, hopefully, you know, open settlement talks without
11 the need for counsel.

12 **THE COURT:** Okay. And I appreciate your being here,
13 sir.

14 Since Mr. Jarquio is here to tell us what's going on,
15 did either side have any questions to further learn what's
16 going on?

17 Any for the Plaintiff?

18 **MS. FULMER:** I don't believe so, Your Honor.

19 **THE COURT:** Or for the Defense?

20 **MR. WINTER:** No, Your Honor.

21 This case, pursuant to the MSA, was a \$20,000 case
22 that no one disputes. That offer was made and was rejected.

23 **THE COURT:** Okay. I guess what I would propose to
24 do -- since Mr. Jarquio has come here, there, obviously, is an
25 intention to pursue it.

1 Obviously, Mr. Jarquio, if she can't get either a
2 lawyer or the declaration of causation from her or a doctor,
3 then it's run aground; we can't go anywhere with it at that
4 point.

5 But I guess, unless somebody has an objection, I'd
6 propose to give the Plaintiffs another, say, six weeks to try
7 to find an attorney or to submit the declaration of causation.

8 Would that be agreeable?

9 **MR. WINTER:** It's agreeable to us, Your Honor.

10 **MS. FULMER:** No objection.

11 **THE COURT:** Does that sound like a ballpark range
12 that she might be able to accomplish something in?

13 **MR. JARQUIO:** Yes, Your Honor.

14 **THE COURT:** Okay. Well, then, in 3:13CV933, we'll
15 show that Roland Jarquio was here to explain the situation for
16 his parents, who could not travel here, and told us that his
17 mother is trying to either reopen discussions with Biomet --
18 and, of course, nothing I do here forecloses that -- or to
19 retain counsel, and the Court provides an additional six weeks
20 from this date for the Plaintiff to either retain counsel or
21 submit the declaration of causation.

22 Okay. Thank you, again, for coming out.

23 **MR. JARQUIO:** Thank you.

24 **THE COURT:** They're fortunate to have you willing to
25 do that.

1 **MR. JARQUIO:** Thank you.

2 **THE COURT:** Thank you.

3 **(Mr. Jarquio exits courtroom.)**

4 **THE COURT:** For the record, that's the only person
5 that was here in the public area.

6 So, we had Robert and Carol Fiacco, our Cause Number
7 13CV1092, who filed the notice of intent but don't appear to be
8 here today.

9 And Stacy Grenier, 13CV867, who filed a declaration
10 of intent and doesn't seem to be here today.

11 I'm holding one back because it's kind of an odd one.

12 But I guess what I would propose to do is, if by the
13 close of our status conference those folks aren't here, Fiacco
14 and Grenier, to go ahead and dismiss those pursuant to the
15 earlier order.

16 Sean Pendlebury has us in an interesting situation,
17 not that he has us in an interesting situation, but we are in
18 an interesting situation. Mr. Pendlebury filed his notice of
19 intent and sent us the declaration of causation.

20 I assume you folks have seen it. If not, I've got a
21 copy here.

22 And I don't know if something fell off between the
23 time the surgeon, Dr. Pritchett, I guess, Dr. James W.
24 Pritchett, returned it to Mr. Pendlebury or what, but we have
25 the Plaintiff's expert declaration of causation. In response

1 to each question, it says, "See attachment," and appears to be
2 signed by somebody whose first initial is J. James W.
3 Pritchett, it might well be. But the only thing attached that
4 we received is the doctor's CV, which, of course, tells us a
5 lot about him but nothing about the causation.

6 Unless somebody has a better idea, I guess what I
7 would propose to do is to give Mr. Pendlebury, say, an
8 additional three weeks, since he's already been in touch with
9 his doctor, to supplement his declaration with the answers to
10 the questions set forth on the form.

11 Mr. Winter.

12 **MR. WINTER:** Your Honor, we will respect whatever you
13 order, but Your Honor should understand that, with respect to
14 some of these pro se litigants, we have very strong views about
15 people abusing their right to access to the Court.

16 Mr. Pendlebury -- we will say that for the record -- is one of
17 those individuals. So if Your Honor wants to give him three
18 weeks, then we're okay with that. But if it was up to us --

19 **THE COURT:** That would not be the way we would go?

20 **MR. WINTER:** Yes, Your Honor.

21 **THE COURT:** From the Plaintiff's standpoint?

22 **MS. FULMER:** No objections, Your Honor.

23 **THE COURT:** Okay. I'll do the three weeks, and the
24 reason for that is, when it says, "See attached," and then the
25 attached is completely unresponsive, maybe we won't get

1 anything better, but it does seem like there is at least the
2 possibility that something got separated.

3 So, in Cause Number 12 -- oh, I'm sorry. That's the
4 Panel Number.

5 In Cause Number 13CV264 -- let me go ahead and put a
6 date with this one -- we'll show that the Plaintiff's expert
7 declaration contains no information concerning causation,
8 refers to a document that was not attached, and the Court
9 affords Mr. Pendlebury to and including May 15th within which
10 to supplement his declaration of causation.

11 Are there any others left that we didn't deal with?

12 **MS. FULMER:** I don't believe so, Your Honor.

13 **MR. WINTER:** I think we have Mr. Eastman, Your Honor.

14 **THE COURT:** Yeah.

15 Mr. Eastman was one of the people who sent in a
16 declaration of intent and declaration of causation.

17 Is that right?

18 **MS. FULMER:** That's correct, Your Honor.

19 **THE COURT:** So you haven't gotten the --

20 **MR. WINTER:** We have that, but I think Mr. Eastman
21 presents a couple of different questions.

22 **THE COURT:** Oh, okay.

23 **MR. WINTER:** Based on all of his motions, letters,
24 submissions, procedurally, I think, his case needs to be
25 addressed.

1 **THE COURT:** Okay.

2 **MR. WINTER:** He's the one that filed, first, a motion
3 to remand, which was denied; then filed a motion for summary
4 judgment, which was denied because all the pro se cases were
5 stayed. Then you said that it's undone. So we're, sort of,
6 now having to address someone who actually signed a release,
7 got a check for \$25,000, and then filed a lawsuit.

8 So, for the record, Your Honor, our position is, at
9 this point, either we move for summary judgment to enforce an
10 executed release with proof of payment or the gentleman gives
11 us back the \$25,000 and we'll decide what we do in terms of
12 litigating.

13 I mean, this case -- again, if we've got people who
14 we think are abusing the system, Mr. Eastman and Mr. Pendlebury
15 are Exhibits A and B.

16 **THE COURT:** Okay. It sounds like getting a summary
17 judgment motion on file might be appropriate, so shall I show,
18 regardless of the rest of the schedule, that Biomet moves for
19 leave to file a summary judgment motion in the **Eastman** case?

20 And that's our Cause 15CV585. The Court grants
21 leave.

22 I assume there's no objection from the Plaintiff --

23 **MS. FULMER:** No objection, Your Honor.

24 **THE COURT:** -- or from the lead counsel, I guess,
25 more accurately?

1 Okay.

2 **MR. WINTER:** Thank you, Your Honor.

3 **THE COURT:** And we'll see what he does with that.

4 Thank you. Yeah, I had forgotten that we've had some
5 filings from him.

6 Well, we've made some headway on the pro se
7 litigants.

8 We've got, then, two, as I understand it, two, where
9 we don't have a dismissal or counsel haven't been acquired,
10 those being the Jarquios and Mr. Pendlebury, and then the two
11 that had a declaration of causation.

12 Do we want to lift the stay with respect to
13 Mr. Babcock and Mr. Eastman altogether since we had everything
14 stayed because they were pro se and we've done what we're going
15 to do, I guess, with the pro ses?

16 **MR. WINTER:** I think, Your Honor, with Mr. Eastman,
17 we would like to file the summary judgment motion, because
18 we've got documentary proof, and avoid discovery, if we have to
19 avoid the expense of discovery.

20 With respect to Mr. Babcock, if the stay is lifted, I
21 think we need to start moving forward on his case.

22 **THE COURT:** Okay. So I'll leave the stay for
23 Mr. Eastman while we address the dispositive motion.

24 And, for the Babcocks, I'll just remove the stay, and
25 I assume they'll be in the next wave of cases when we get them

1 set up.

2 **MR. WINTER:** We can add him to Group 4. At this
3 point, Your Honor, that will work.

4 **THE COURT:** Does that seem workable?

5 **MS. FULMER:** That would be my preference, Your Honor.

6 **THE COURT:** Okay. Yeah, they've been waiting for a
7 while.

8 Anything else on the pro se side for the
9 Plaintiffs --

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

11 **THE COURT:** -- Plaintiffs generally, rather than the
12 pro ses?

13 I guess we can go ahead and get in on the phone call
14 then.

15 **(Telephone connected.)**

16 **THE COURT:** To those who are on the phone, the
17 courtroom has just joined the call.

18 This is our Cause Number 12MD2391, the Panel's Cause
19 Number MDL 2391, **In Re: Biomet M2a-Magnum Hip Implant Products**
20 **Liability Litigation.**

21 We welcome those who have dialed in.

22 And, as I understand it, our notice indicated that,
23 in the courtroom, we would be starting with the handling of the
24 pro se cases at 1:30 and then move directly into the status
25 conference, and we have resolved, at least to the extent we can

1 today, the pro se issues, so we will launch into the status
2 conference agenda.

3 Ms. Hanig, you have, usually, been the one who tells
4 us the active case count.

5 **MS. HANIG:** I'm happy to do that, Your Honor.

6 If we take out the two pro se dismissals you just
7 referred to, we're at 216 cases that are active and unresolved.

8 **THE COURT:** Okay. And there are some cases, I
9 assume, that we show still pending that have not
10 been completely wrapped up?

11 **MS. HANIG:** Correct. Yes.

12 And we're working on --

13 **COURT REPORTER:** I'm sorry, Ms. Hanig. Could you
14 speak into a microphone?

15 **MS. HANIG:** I'm sorry.

16 And we're working on the dismissals of cases that are
17 funded. So once the funding is hitting, we're submitting
18 stipulations of dismissal, so we're working on narrowing that
19 list so the active list and the CM-ECF list are the same.

20 **THE COURT:** Any feel as to what the difference might
21 be, at this point, as far as cases that you think will be
22 funded and dismissed in the next few weeks?

23 **MS. HANIG:** I know there are two reports, Funding
24 Report 27 and 28, that we have notices out to Plaintiffs'
25 counsel asking them to agree to the stipulations, so I would

1 say, in the next couple weeks, there could maybe be 75 cases
2 that could come off.

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

4 Then, the next agenda item is discovery update,
5 broken down into two subtopics, Groups 3 and 4 and the other
6 being general expert discovery.

7 I don't know who wishes to speak.

8 **MS. FULMER:** I'll be happy to address it, Your Honor.

9 **THE COURT:** Okay. Ms. Fulmer.

10 **MS. FULMER:** Brenda Fulmer on behalf of the
11 Plaintiffs.

12 Your Honor, there are 62 cases originally in Group 3
13 and 47 cases in Group 4.

14 Discovery is underway with regard to Group 3. That
15 discovery closes on August 25th, 2017.

16 We've already completed the case-specific discovery
17 for Groups 1 and 2, which, roughly, included about 50 cases per
18 group.

19 As far as Group 4, that was the order that was
20 entered by the Court just recently, and that order requires
21 authorizations to Biomet by, I believe it's, July 10th, and
22 that discovery will be completed as of January 5th, 2018.
23 We're not experiencing any issues, at this time, with regard to
24 that discovery, from the Plaintiffs' perspective.

25 As far as general expert discovery, both sides have

1 submitted their expert reports. The first deposition that I'm
2 aware of took place last week or the week before in my office
3 of Dr. Kantor. All of the Plaintiffs' depositions need to be
4 completed by May 4th and the depositions of the Defense experts
5 by July 3rd, 2017, with dispositive motions and **Daubert** motions
6 to follow. I believe all the briefing is closed on that as of
7 August 27th, and the Plaintiffs don't, at this time, have any
8 concerns about meeting those deadlines.

9 **THE COURT:** You say you don't have concerns, at this
10 point?

11 **MS. FULMER:** Not at this time, Your Honor.

12 **THE COURT:** Anything to add from the Biomet end?

13 **MS. HANIG:** I don't believe so. That all sounds to
14 be correct.

15 **THE COURT:** Okay. I'm glad we're on track.

16 You listed three cases with pending motions, and
17 those are the **Langan** case, the **McClure** case, and the **Marie**
18 case. I think **Marie** is the only one where the response was
19 filed so the motion's ripe. I think we're looking for
20 responses in the other two cases next week. And I know I owe
21 you a ruling in the **Marie** case.

22 Do my notes match your understanding?

23 **MR. WINTER:** Yes, Your Honor.

24 And with respect to the **Langan** case, information was
25 provided to us Friday afternoon. We may be withdrawing that

1 motion.

2 **THE COURT:** Oh, okay. All right.

3 But something's going to happen by next week?

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

5 **THE COURT:** Okay. All right. I had one matter to
6 raise, and that is the metal-on-polyethylene cases. There were
7 Plaintiffs in those five case who had to submit a declaration
8 of causation. We got a notice of settlement in the **Nelson**
9 case.

10 And, Ms. Fulmer, I know this wasn't on the agenda so
11 you may not be able to answer, but, apparently there's been
12 some communication between my chambers and your office that two
13 declarations of causation were received out of those.

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

15 We received declarations on the **Glynn** case, as well
16 as the **White** case.

17 We also received information -- I don't know if this
18 is correct. Biomet can correct if I'm wrong on this -- that
19 the case of **Leroy Just** has been resolved.

20 And I've also been in communication with counsel with
21 regard to the remaining case -- I believe the name of the
22 Plaintiff is **Hodge** -- and they informed me, earlier today, that
23 they will be filing something with the Court shortly. I
24 reminded them that they had missed the deadline. There was a
25 number of extenuating circumstances, so I've asked them to file

1 something with the Court as soon as possible, either a
2 declaration or a motion for relief.

3 **THE COURT:** Okay. Well, I guess we have reached the
4 time when the **Hodge** case should be dismissed. But if they're
5 planning to file something, I guess I'll just sit on it for a
6 week and await something, rather than change the procedural
7 context, with the understanding that I'll dismiss it if we
8 don't get anything from them in the next week.

9 Is that workable to both sides?

10 **MR. WINTER:** Your Honor, if there's a date certain
11 here, that if nothing is filed by --

12 **THE COURT:** Sure.

13 **MR. WINTER:** -- then the case would be dismissed, we
14 would agree with that.

15 **THE COURT:** So May 1st, does that sound like the
16 timetable they were working with, Ms. Fulmer? You didn't have
17 a feel for that?

18 **MS. FULMER:** I really don't, Your Honor.

19 **THE COURT:** Okay. I'll give them till May 1st.
20 Obviously, if they need more time to seek more time to submit
21 the declaration, I'll read it and see what happens then.

22 I guess the next deadline that we have is July 10th
23 when we are to confer with regard to the management of the
24 remaining cases. I could set a deadline -- set a conference, a
25 new status conference, for July 10th, and we could double up on

1 that, unless somebody has a different idea.

2 **MS. FULMER:** That's fine.

3 **MR. WINTER:** Your Honor, what day of the week is
4 July 10th?

5 **THE COURT:** It's a Monday, and I'm looking here and
6 realizing that I have a three-day jury trial starting that day
7 so I might be making you an offer that I shouldn't be.

8 Maybe Thursday, the 13th, would be safer on my
9 calendar. I don't know what your calendars look like. I can
10 do morning or afternoon that day.

11 **MR. WINTER:** Your Honor, I'm trying to think of
12 something maybe the following week.

13 And I can't check it right now, so could we pick the
14 13th, subject to me --

15 **THE COURT:** Sure.

16 Ms. Fulmer, does that work for you?

17 **MS. FULMER:** The 13th is fine, Your Honor.

18 **THE COURT:** Do you folks have a preference between
19 morning or afternoon, since, I guess, depending on what you
20 agree to, we may be here? Maybe we can do it by phone.

21 **MR. WINTER:** The morning of the 13th, Your Honor.

22 **MS. FULMER:** Morning would be preferable, Your Honor.

23 **THE COURT:** Okay. So we'll set it for 9:30 so that,
24 if there is an in-person conference, we can do our
25 pre-conference.

1 Let me write this down here.

2 Anything further, then, Ms. Fulmer?

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

4 I'd like to go back to the metal-on-polyethylene
5 cases.

6 **THE COURT:** Yes.

7 **MS. FULMER:** Is it the Court's intent to activate the
8 two cases that filed the declarations or are we going to
9 address them at a later point in time?

10 **THE COURT:** I broke away from that subject too soon.

11 Are their preferences that anybody has?

12 It seems -- if we have the declarations of causation,
13 it would seem like maybe it's time to activate them.

14 **MR. WINTER:** I think, given where we are with the 47
15 and adding **Babcock** to Group 4, I think those two cases should
16 go into whatever is going to come out of the July conference,
17 Your Honor.

18 **THE COURT:** Potential Group 5?

19 **MR. WINTER:** Right.

20 **THE COURT:** Is that agreeable?

21 **MS. FULMER:** That's agreeable, Your Honor.

22 **THE COURT:** It does seem like you would need at least
23 some different discovery.

24 So I will show, as part of today's record, then, that
25 the **Glynn** and **White** metal-on-polyethylene cases will become

1 part of the next group, rather than Group 4 --

2 **MR. WINTER:** Thank you, Your Honor.

3 **THE COURT:** -- understanding that we still need to
4 structure that a little bit.

5 Anything further for the Plaintiffs?

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

7 **THE COURT:** For the Defense?

8 **MR. WINTER:** No, Your Honor.

9 **THE COURT:** Okay. Thank you, folks.

10 **LAW CLERK:** All rise.

11 **(All comply; proceedings concluded.)**

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