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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a-MAGNUM CAUSE NUMBER  
HIP IMPLANT PRODUCTS LIABILITY 3:12MD02391  
LITIGATION

THURSDAY, JANUARY 28, 2016

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ROBERT L. MILLER, JR.

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*DEBRA J. BONK*  
*Federal Certified Realtime and Registered Merit Reporter*  
*United States District Court*  
*204 South Main Street - Room 323*  
*South Bend, Indiana 46601*  
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*574-246-8039*

*Proceedings reported in machine shorthand. Transcript  
produced by computer-aided transcription, Eclipse.*

1 TELEPHONIC APPEARANCES:

2 FOR PLAINTIFFS:

3 NAVAN WARD

4 BRENDA FULMER

5 AHMED DIAB

6 FOR BIOMET:

7 MR. JOHN WINTER

8 MS. ERIN LINDER HANIG

9 (see docket for addresses.)

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1           **COURTROOM DEPUTY:** Hello.

2           This is Judge Miller's courtroom.

3           **MR. DIAB:** Hi.

4           This is Ahmed Diab, and I'm going to put everyone  
5 onto the conference.

6           **COURTROOM DEPUTY:** Okay. Thank you.

7           **MR. DIAB:** Good afternoon, Madam Clerk.

8           Good afternoon, Your Honor.

9           You're now live with the conference.

10          **THE COURT:** Okay. This is Cause Number 12MD2391, **In**  
11 **Re: Biomet M2a-Magnum Hip Implant Products Liability**  
12 **Litigation**, and we are gathered by telephone for a status  
13 conference in this case, meeting by telephone, since it is  
14 January here in Northern Indiana.

15           Could I ask you folks to state your appearances, for  
16 the record, please?

17          **MR. WARD:** Yes.

18           Navan Ward for the Plaintiffs.

19          **THE COURT:** Mr. Ward.

20          **MS. FULMER:** Brenda Fulmer on behalf of the  
21 Plaintiffs.

22          **THE COURT:** Ms. Fulmer.

23          **MR. DIAB:** Ahmed Diab on behalf of the Plaintiffs.

24          **THE COURT:** Mr. Diab.

25           And for the Defense?

1           **MR. WINTER:** John Winter on behalf of Biomet.

2           Good afternoon, Your Honor.

3           **THE COURT:** Good afternoon, Mr. Winter.

4           **MS. HANIG:** Erin Hanig on behalf of Defense.

5           **THE COURT:** Erin Hanig, also, for the Defense.

6           Is that it?

7           **(No response.)**

8           **THE COURT:** Okay. I looked at your status conference  
9 agenda, and I guess I would -- oh, I've got a list people that  
10 are -- okay.

11           Tell me how you folks see the pending case count,  
12 because I may be seeing it differently than you folks do. I  
13 know that's the first thing on the agenda, so let me turn it  
14 over to whoever -- whichever side is going to speak first on  
15 that issue.

16           **MR. WARD:** Well, I know, Your Honor, that -- and this  
17 Navan Ward, for the record -- that the parties have been  
18 communicating with each other in order to come up with the  
19 Group 1 and, ultimately, Group 2 group of cases.

20           Since there are a number of cases that are, probably,  
21 technically, still in the docket, they may have settled, and  
22 Biomet has a better understanding of the cases that have  
23 settled and should not be, technically, included in the  
24 scheduling order that Your Honor entered back this past  
25 December.

1           And so we are still going back and forth on the  
2 correct cases that, again, need to be in Group 1 and Group 2,  
3 but I think Biomet will, probably, be able to speak more to the  
4 total number of cases, in relation to which ones that may have  
5 resolved and either will be coming off or have already come  
6 off.

7           **THE COURT:** Okay. Ms. Hanig, I think the ball just  
8 went to you.

9           **MS. HANIG:** That's correct.

10          Go ahead.

11          **MR. WINTER:** Ms. Hanig will take care of this,  
12 Your Honor.

13          **MS. HANIG:** Okay. As far as the current number of  
14 pending cases, there are approximately 280, by our count, that  
15 are, actually, live and not settled.

16          **THE COURT:** Okay. That's where --

17          **MS. HANIG:** And, then, there are more on the docket  
18 that haven't been -- that are settled in principle but have  
19 not, actually, been dismissed yet by stipulation.

20          **THE COURT:** Okay. We have a big gap there, because  
21 we had -- the list that you sent showed -- we had 143, but we  
22 show 1,202 pending cases. So taking out the 143 reported  
23 settlements, we show 1,059 cases.

24                 Would there be that many that are settled but not  
25 formalized?

1           **MS. HANIG:** It could be.

2           Just recently, I just worked with the Clerk's Office  
3 on the pending case count, and we looked back to see how many  
4 cases are settled but have not yet been dismissed, and it's a  
5 big number, but it's more like in the four to six hundred  
6 range, not in the thousand range, so -- and we're working on  
7 that.

8           Basically, we can't get a case dismissed until it's  
9 fully funded and then we have agreement from Plaintiffs'  
10 counsel.

11           **THE COURT:** Sure.

12           **MS. HANIG:** So there are large chunks of cases that  
13 are funded and ready to be dismissed, but we don't have the  
14 green light from Plaintiffs' counsel yet.

15           **THE COURT:** Okay.

16           **MS. HANIG:** And when we do, then we file the  
17 stipulation to dismiss, and it gets off the docket.

18           But I can tell you, based on what is still active,  
19 there are 278 cases that are truly not settled and still  
20 active.

21           **THE COURT:** Okay. Why don't -- I will attach our  
22 list to the memorandum of today's conference, and it's  
23 obviously not -- there's things far more urgent in this case.  
24 But if, from that list, you could identify for us which the  
25 active ones are, it would be helpful from our end.

1           **MS. HANIG:** Yeah, I can easily do that, Your Honor.

2           **THE COURT:** Okay. Did that take care of the pending  
3 case count? I didn't mean to supercede anybody's comments.  
4 Does that do what we wanted on that agenda item?

5           **(No response.)**

6           **THE COURT:** Okay. I guess --

7           **MR. WINTER:** We believe so, Your Honor.

8           **THE COURT:** Okay. Item 2 is the status of cases  
9 subject to the discovery schedule. I don't know who wants to  
10 lead off on that one.

11           **MS. FULMER:** Your Honor, this is Brenda --

12           **MR. WARD:** Brenda, you can go ahead.

13           **MS. FULMER:** Thank you, Navan.

14           Your Honor, this is Brenda Fulmer on behalf of the  
15 Plaintiffs.

16           As far as the cases that are subject to the discovery  
17 schedule, the Plaintiffs' Steering Committee has had calls with  
18 all of the Plaintiffs' lawyers around the country that have  
19 cases and talked to them specifically about the Court's order  
20 with regard to the deadlines that are coming up on the  
21 statute-of-limitations track, the spoliation track, as well as  
22 the Group 1 and Group 2 discovery.

23           And Ahmed Diaz, from the Gomez Firm, has been working  
24 to coordinate the deposition dates, and so those things are  
25 moving along quite well.

1           And I'm, also, working with Ms. Hanig to come up with  
2 a confirmed list of the Group 1 cases so that we can notify  
3 that counsel, and so -- and that process will, also, help to  
4 fix the Court's list as far as the truly pending cases.

5           **THE COURT:** Okay. So, from your perspective, we're  
6 on pace?

7           **MS. FULMER:** I believe so, Your Honor.

8           **THE COURT:** Okay. Anything different from the  
9 Defendant's perspective?

10          **MR. WINTER:** Not materially different, Your Honor.

11           There are -- we're now down to seventeen cases on the  
12 statute-of-limitation track because two of them got resolved.

13           Of the remaining seventeen, I believe four or five,  
14 Your Honor, are deficient because the deadline to have  
15 responded has passed on the statute of limitations, and we  
16 received no response. We've sent a short letter to those  
17 counsel asking them to cure, within seven days, and we've,  
18 actually, gotten a response already from the counsel, on two of  
19 those cases, that he is moving to withdraw, so I think we're  
20 moving a pace.

21           We're going to send to the Plaintiffs' Steering  
22 Committee, probably today or tomorrow, what we would propose as  
23 the order of depositions for the statute of limitations. We'll  
24 meet and confer, and then go forward to the counsel for each  
25 specific Plaintiff and, hopefully, agree upon dates, so I think

1 we're, actually, going in the right direction.

2 **THE COURT:** Okay. Sounds good.

3 Am I assuming correctly that the pending motions list  
4 is your count of motions that are ripe for me to rule on? As  
5 you know, I ruled on some yesterday. I'm sorry it took so long  
6 for me to get to those. But all the rest of these, we should  
7 turn our attention to?

8 **MR. HANIG:** That's correct, Your Honor.

9 And, as you said, I think at least five of those come  
10 off the list based on yesterday.

11 **THE COURT:** Okay. We'll get on it.

12 Anything else? That works our way to the bottom of  
13 the agenda. Anything further for the Plaintiffs' Steering  
14 Committee?

15 **MR. WARD:** Nothing from the Plaintiffs, Your Honor.

16 **THE COURT:** Or from the Defense?

17 **MR. WINTER:** Nor from the Defense, Your Honor.

18 **THE COURT:** Okay. Let's pick another date. I think  
19 -- go ahead.

20 **MR. WINTER:** Other than we very much appreciate you  
21 doing this conference by phone.

22 **THE COURT:** Oh, especially, once the agenda came in,  
23 it seemed to make a lot more sense.

24 And I think, from what I can tell from the dates  
25 coming up, we might want to do the next one by phone, also.

1 I'd like to set one maybe four to six weeks out just so, if  
2 there are problems, we've got a time set to address it.

3 Let's see here. How about 9:30 on March 14th?  
4 That's a Monday. And I'll show it as a telephonic conference.

5 I'm sorry. Go ahead.

6 **MR. WARD:** This is Navan.

7 That looks good for me. However, Brenda and Ahmed, I  
8 don't want to speak for them.

9 **THE COURT:** Okay.

10 **MR. DIAB:** Your Honor, this is Ahmed Diab.

11 That works fine for me, 9:30 Eastern, on Monday, the  
12 14th.

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

14 **MS. FULMER:** Yes, Your Honor, that date is fine for  
15 me, as well.

16 **THE COURT:** Okay.

17 **MR. WARD:** Your Honor, this is Navan Ward.

18 The date, certainly, is fine, appears to be fine for  
19 the Plaintiffs. However, I would suggest, if it's possible,  
20 for us to be able to do it at the same time, the 1:30 time  
21 frame, in the event that it changes and there will be a need to  
22 be --

23 **THE COURT:** I've got a 1:30 final pretrial conference  
24 already set, so I guess I'd offer 2:00.

25 Does that change anybody's response?

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

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

3           **THE COURT:** Okay. Mr. Winter and Ms. Hanig?

4           **MR. WINTER:** We're good at either time, Your Honor.

5           **THE COURT:** Okay. Let's set it for 2:00, then. And  
6 if it does turn into being in-person, we'll figure out a way to  
7 slide the informal pre-conference in there and maybe start this  
8 one a little bit later, like 2:15 or something. And, in all  
9 likelihood, whatever I've got set for that final pretrial  
10 conference will settle between now and then, but who knows.

11           Okay. So we show the next conference for  
12 March 14th at 2:00. And, again, just looking at what's  
13 supposed to happen, if all stays on track, it looks like we  
14 should be able to do it by phone. But, obviously, if there's  
15 anything where I could be of more assistance with everybody  
16 here, I'm happy to do it that way.

17           Ms. Hanig, the word around town is that you gave  
18 birth, so congratulations.

19           **MS. HANIG:** Thank you, Your Honor. That's correct,  
20 so I'm happy about doing this telephonically, as well.

21           **THE COURT:** I'll bet.

22           All right. Well, thank you, folks, and I'll talk to  
23 you, or see you, on March 14th, and I will add our case list to  
24 today's very brief memo so that you folks can let me know which  
25 ones are, actually, active.

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Thanks, again.

(Proceedings concluded.)

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CERTIFICATE

I, DEBRA J. BONK, certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter.

DATED THIS 28th DAY OF JANUARY, 2016.

S/S DEBRA J. BONK

DEBRA J. BONK  
FEDERAL CERTIFIED REALTIME/REGISTERED MERIT REPORTER