

1 **THE COURT:** This is Judge Miller.

2 We are gathered for the status conference in our
3 Cause Number 12MD2391, MDL Number 2391, **In Re: Biomet M2a**
4 **Magnum Hip Implant Products Liability Litigation.**

5 I apologize to those present in court and to what
6 apparently is twenty-eight people on the phone for the slightly
7 late start. I was trying to remember. I'm not sure we've had
8 to wait for a criminal case to end in all the time we've been
9 doing this, which is -- it probably has happened and I can't
10 remember it, but that's kind of a good thing.

11 If I could ask those in court to state their
12 appearances for the record, please.

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

14 Navan Ward, for the Plaintiffs.

15 **THE COURT:** Mr. Ward.

16 **MS. HANIG:** Erin Hanig, for the Defendants.

17 **THE COURT:** Ms. Hanig.

18 **MR. WINTER:** John Winter, for the Defendant.

19 Good afternoon, Your Honor.

20 **THE COURT:** Good afternoon.

21 And Mr. Winter.

22 I'm glad you were all able to get here today. This
23 is much better weather than we have any reason to expect in
24 this part of the country on January 9th.

25 I have your status conference agenda, and I have

1 looked it over. I have one or two other things that I want to
2 add at the end, but let's go ahead and hop right in.

3 The active case count, I think, has finally been
4 going down.

5 **MS. HANIG:** It is, Your Honor.

6 My current number is 246 that are still active in
7 this court, so there may be a few of those that were remanded
8 out but the case hasn't officially been closed. But active, I
9 have 246.

10 **THE COURT:** Okay. I assume you have nothing
11 different than that, Mr. Ward?

12 **MR. WARD:** You're correct, Your Honor.

13 **THE COURT:** Okay. Discovery update.

14 **MS. HANIG:** So, we are actually in Group 6 right now
15 and are nearing the close, which will happen February 26th.
16 The only issue that I foresee in any of those cases is actually
17 already -- there's already a motion filed and briefings
18 underway, which is on -- there are twelve plaintiffs who filed
19 some 30(b)(6) notices for depositions in the case-specific
20 discovery that we're opposing, so you're aware of those.
21 Otherwise, I don't see anything else that will delay Group 6.

22 Group 7, we've started scheduling depositions and are
23 moving forward, not an issue in any of those cases, so far.
24 And, then, when Group 7 concludes, I believe there will be some
25 remaining cases that have not yet gone through case-specific

1 discovery. I'm not sure how the Court wants to address those.

2 **THE COURT:** Okay. Were they effectively -- as you
3 see it, would they effectively become a Group 8 or --

4 **MR. WINTER:** I think that's correct, Your Honor.

5 **THE COURT:** Okay. Mr. Ward, does all of that sound
6 right to you or do you have anything to add to it?

7 **MR. WARD:** Yes, Your Honor, we are in agreement
8 with -- that will be the next logical step for those group of
9 cases, for that group of cases, Your Honor.

10 **THE COURT:** I guess we had -- according to our notes
11 on the time line, the case list for Group 8 is to be submitted
12 by February 12th, so it sounds like we're plugging along in
13 the right direction.

14 Yeah, I do know about the 30(b)(6) issue. I wanted
15 to get the rulings out that I promised you the last two status
16 conferences before I turned to that, so that's next up.

17 **MS. HANIG:** And that one is not fully briefed yet,
18 Your Honor.

19 **THE COURT:** Oh, that's right.

20 **MS. HANIG:** Yeah.

21 **THE COURT:** Okay. Good. Then there may be something
22 else next up before I get to those.

23 Remand procedure.

24 **MS. HANIG:** Your Honor, we just submitted our
25 proposed list -- our joint proposed list for Remand Group 3. I

1 saw yesterday you issued an order asking us to clarify some of
2 those cases, and we're going to do that by January 28th, and
3 then I believe the date for the suggestion of remand is
4 February 28th. I don't see any issues with either side on
5 Remand Group 3.

6 **MR. WARD:** Yes, Your Honor. The parties will
7 certainly continue to meet and confer with regards to your
8 order and being able to narrow it down to the appropriate
9 cases, and I don't see that there will be any issues with being
10 able to move forward in February with that group of remand
11 cases.

12 **THE COURT:** Okay.

13 **MR. WINTER:** And, Your Honor, while we'll make a
14 formal submission on the 28th, quickly looking last night,
15 most of the cases are on funding reports from the second half
16 of 2018, and the way we've worked is we usually give enough
17 period of time for the liens and all that to get resolved.

18 There are cases that literally were resolved last
19 week, and the parties conferred and agreed not to include them
20 on the list. There's actually one or two that were put on the
21 funding report that went to our client on Monday, so I think
22 we'll be able to give you a pretty good picture as to why those
23 cases were not on the list.

24 **THE COURT:** Yeah. I always assume on these that
25 we're just running a little bit behind as far as the

1 information process, but it does seem like we ought to try to
2 remain synchronized on them, as we go along. So, I appreciate
3 the report, and it sounds pretty much like what I expected,
4 although not quite that recent, perhaps, as Monday.

5 Pending motions overview.

6 **MS. HANIG:** Your Honor, this is a note of what we had
7 on our list, and I know that you've been working through the
8 summary judgment motions, and I think these are the more
9 recent, recently filed motions.

10 **THE COURT:** Okay. I know the -- is it "Cuckler" or
11 "Cuckler"? How do you pronounce that?

12 **MS. HANIG:** "Cuckler."

13 **THE COURT:** "Cuckler."

14 I know that those motions are ripe. I've been
15 looking those over, along with the amended fraud claims that
16 come in those cases.

17 Spoliation, I think, is ripe, and we're going to get
18 to them.

19 I have two matters that are kind of leftovers from
20 prior discussions that we've had. And as the end becomes a
21 little more a light at the end of the tunnel, although not
22 quite yet, I thought I better raise them so we can start
23 dealing with them.

24 We have, as best we can tell, two non-revision cases
25 still pending, and, of course, we had set the non-revision

1 cases aside because of issues of proof; that, while there are
2 issues of proof -- there's no question about that -- they might
3 not be fatal or they might be fatal to the case, but I guess I
4 would inquire.

5 When should I be lifting the stay so that whatever
6 discovery is to be done before common discovery is to be done
7 before remand can take place?

8 **MR. WARD:** Well, Your Honor, I certainly would want
9 to be able to speak with those attorneys or counsel that's
10 representing those particular clients in order to find out what
11 their specific needs are, to the extent it is additional to
12 what has already occurred. And we would have the ability to be
13 able to give at least their input regarding when the stay
14 should be lifted, hopefully, within the next couple of weeks,
15 and possibly be able to provide you insight from their
16 perspective definitely in the next couple of weeks, if not by
17 the next case management conference.

18 **THE COURT:** Okay. Any better idea from the other
19 side?

20 Mr. Winter, your brow is furrowed.

21 **MR. WARD:** He always does that to me.

22 **MR. WINTER:** Your Honor, I think you denied our
23 motions to dismiss both of those cases, which, you know, if you
24 look at it from our perspective, as to what the order was on
25 the five hundred, we get your ruling, but it actually -- very

1 candidly, non-revision cases are very irksome to us, without,
2 you know, mincing words, Your Honor.

3 So what I think we would do is, if those two
4 Plaintiffs really want to pursue a case, which there's already
5 an order that basically defines it as a non-injury case,
6 therefore not compensable, then we'll put them in Group A. I
7 mean, that's --

8 **THE COURT:** Okay.

9 **MR. WINTER:** I don't think that, like, serves the
10 greater good, but if that's what they want to do, that's what
11 they should get.

12 **THE COURT:** All right. Let's see. If Group A -- the
13 case lists will be coming out February 12th.

14 Mr. Ward, can I ask you to, say, within the next two
15 weeks, notify the Court and opposing counsel as to what
16 originating counsel want to do on those two cases?

17 And, for the record, those two cases, there's the
18 **Jacobs** case, which is our 3:18cv00655, and the **Lambdin**,
19 L-a-m-b-d-i-n, case, our Cause 3:17cv00897.

20 And if they do intend to proceed with them, then
21 we'll go ahead and include them in Group 8 and understand there
22 might be some motion practice as we move along.

23 But is that workable for you, two weeks?

24 **MR. WARD:** Yes, Your Honor.

25 And can you tell me when you want me --

1 **THE COURT:** Two weeks, would that work?

2 **MR. WARD:** Two weeks, perfect.

3 **THE COURT:** This is the 9th. The 23rd.

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

5 **THE COURT:** Hopefully, we'll all be open, taking
6 reports from people by then.

7 The only other thing on my agenda, we had vacated --
8 and I don't know if this has been resolved, but we had vacated
9 the hearing on the motion to enforce the settlement in **Nance**
10 **ex rel. Simpson.** I have to start phrasing it that way because
11 sometimes I see it as **Nance** and sometimes as **Simpson**, but **Nance**
12 **ex rel. Simpson.** We vacated the hearing two months ago.

13 Do we need to reset it?

14 **MR. WINTER:** Your Honor, we can report to you that
15 that case has been resolved. A different release has gone, and
16 that case will be dismissed, in due course.

17 **THE COURT:** Okay. All right. And that will take the
18 motion to enforce with it.

19 Okay. Anything else that we can address today, other
20 than picking the next conference date?

21 Anything for the Plaintiff?

22 **MR. WARD:** Nothing further from the Plaintiffs,
23 Your Honor.

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

25 **MR. WINTER:** None from Biomet, Your Honor.

1 **THE COURT:** I've been involved in a couple of
2 seminars lately on winding up MDLs, and I want to commend you
3 folks because they don't always go as smoothly as this one has.
4 I heard some terrible horror stories.

5 Let's see. Would it be more helpful for us to gather
6 next after that February 12th, after we've got the Group 8
7 list, so that if there is something that doesn't match up we
8 can talk about it then, or would it be more helpful to meet
9 before that so the Group 8 list can reflect anything we've had
10 to do?

11 **MR. WARD:** From the Plaintiffs' perspective,
12 Your Honor, I think that makes sense.

13 **THE COURT:** Which one?

14 **MR. WARD:** I'm sorry. To be able to do the next case
15 management conference after, so if there's any issue --

16 **THE COURT:** Sometime after the 12th of February?

17 **MR. WARD:** Yes, Your Honor.

18 **MR. WINTER:** I think that makes sense, as well,
19 Your Honor.

20 **THE COURT:** Okay.

21 **MR. WINTER:** Your Honor, may I suggest that we
22 actually do it after you finalize the Remand Group 3 order so,
23 rather than do it in the second half of February, we come to
24 you, again, in early March?

25 **THE COURT:** I don't see anything that's coming up

1 real fast urgently.

2 Is that agreeable?

3 **MR. WARD:** Yes, Your Honor.

4 **THE COURT:** Okay. Let's see what I've got for you
5 here.

6 I know this is a little earlier than might sound
7 appropriate, but how would, say, 1:30 on March 4th look?
8 I've got trials and an MDL fairness hearing for the next weeks
9 after that, the next few weeks after that.

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

12 **THE COURT:** That's a Monday. I'm sorry.

13 Would that be too soon after the --

14 **MR. WINTER:** That will work for us.

15 **THE COURT:** Mr. Ward?

16 **MR. WARD:** That will work for Plaintiffs, as well,
17 Your Honor.

18 **THE COURT:** Okay. So, the next status conference
19 will be 1:30 on March 4th.

20 And, as usual, if anything comes up that you need a
21 quick-from-the-hip ruling, I will be happy to take such phone
22 calls.

23 Anything further for the Plaintiffs today, Mr. Ward?

24 **MR. WARD:** Nothing further, Your Honor.

25 **THE COURT:** Or for Biomet?

1 **MR. WINTER:** Nothing further, Your Honor.

2 **THE COURT:** Thanks, folks.

3 Hopefully, you'll have a lot of rulings from me
4 between now and then, too.

5 **MR. WARD:** Thank you.

6 **LAW CLERK:** All rise.

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

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