

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP )  
IMPLANT PRODUCTS LIABILITY )  
LITIGATION (MDL 2391) ) CAUSE NO. 3:12-md-2391  
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This Document Relates to All Cases )  
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ORDER

At the April 25, 2013 case management conference, counsel asked that I designate the place where the plaintiffs are to conduct Rule 30(b)(6) depositions (and, by implication, the deposition of other Biomet employees who work in Warsaw).

The factors that govern a court’s exercise of discretion with respect to the location for corporate depositions are these: the location of the corporate headquarters, the location of the court, and time, expense, and inconvenience of travel for the deponent. *See New Medium Technologies, LLC v. Barco, N.V.*, 242 F.R.D. 460, 462-463, 465-467 (N.D. Ill. 2007); *Custom Form Mfg., Inc. v. Omron Corp.*, 196 F.R.D 333, 336 (N.D. Ind. 2000); *Fellowes, Inc. v. Aurora Corp. of America*, No. 07 C 7237, 2009 WL 1097063, at \*6 (N.D. Ill. Apr. 1, 2009); *Wallace v. Hounshel*, 1:06-cv-1560 2008 WL 282069 at \*1 (S.D. Ind. Jan. 29, 2008).

Biomet’s headquarters is in Warsaw, Indiana, and the court assumes the Rule 30(b)(6) deponents will be traveling from Warsaw. No one has asked that the depositions be conducted in Warsaw. According to Google Maps, the distance from Warsaw to the three suggested deposition sites are: to Fort Wayne, 42.3 miles; to South Bend, 46.6 miles; to Indianapolis, 119 miles. The court assumes the distance to plaintiffs’ liaison counsel’s office on the north side of Indianapolis would be a little less, but the distance from Warsaw to Indianapolis still would be between two and three times the distance to South Bend or Fort Wayne. Time,

expense, and inconvenience of travel for the deponents favors conducting the corporate depositions in South Bend or Fort Wayne.

South Bend and Fort Wayne both are in the district in which this MDL docket has been centralized and so would be more easily reached if I should have to intervene. As a practical matter, any necessary intervention is likely to occur telephonically rather than with me walking to an office in South Bend or driving to Fort Wayne. Still, were it to become necessary for a judicial officer to preside over part of a deposition, I could refer the task to a magistrate judge of this court in either South Bend or Fort Wayne; someone would have to travel to a deposition in Indianapolis. Again, in light of advances in communication since most of the case law developed, I don't put much weight on this factor.

All of the customary factors, then, favor conducting the depositions in South Bend or Fort Wayne — locations within this district and considerably closer to Warsaw than the alternative. On the other side of the ledger is that this isn't the ordinary case for which the civil rules were adopted. This is a docket of cases centralized before me under 28 U.S.C. § 1407(a) “for the convenience of the parties and the witnesses and [to] promote the just and efficient conduct of” the cases. Efficiency contemplates an awareness of the cost of litigating a docket that now includes about 300 cases.

Conducting the corporate depositions in Indianapolis would facilitate travel by plaintiffs' attorneys conducting the depositions. Counsel could fly into Indianapolis, usually without the need for connecting flights, conduct the depositions at a facility on or adjacent to the airport grounds, and fly out the same day. For that matter, lead counsel for Biomet could do so, as well. That can't be done in South Bend or Fort Wayne. With 40 to 50 depositions ahead (including the non-Rule 30(b)(6) depositions), both sides could reduce expenses (which is one of the purposes of centralization under § 1407).

But § 1407(a) directs the Panel (and indirectly, the transferee court) to consider the convenience of witnesses, as well. That brings us full circle, back to

the two locations in the Northern District of Indiana that are significantly closer to Biomet's Warsaw headquarters than Indianapolis.

There is little to choose between South Bend and Fort Wayne. Biomet's liaison counsel is in South Bend, but I haven't been given a reason to think that space is available in their office for conducting depositions.

Accordingly, having been asked to designate the location for corporate depositions to be taken by the plaintiffs, I designate South Bend and Fort Wayne as the location(s) in the absence of agreement to conduct a given deposition or group of depositions elsewhere.

IT IS SO ORDERED.

ENTERED: May 3, 2013

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

