

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP)
IMPLANT PRODUCTS LIABILITY) CAUSE NO. 3:12-MD-2391 RLM
LITIGATION (MDL 2391))
)
)

This Document Relates to All Cases)

)

ORDER

By agreement of the parties, the following scheduling order, setting forth the deadlines for resolving motions for summary judgment relating to the statute of limitations, statute of repose, and spoliation will apply to all cases listed in attached Exhibits A, B, and C:

1. Statute of Limitations

A. Within **30 days after the date of this order**, plaintiffs whose cases are listed on Exhibit A attached to this order will provide:

i. Interrogatory responses corresponding to these questions from Biomet's originally proposed Plaintiff Fact Sheet (this order doesn't preclude objections by a plaintiff or plaintiffs):

- When did you first contemplate obtaining an attorney regarding any of the injuries alleged in your complaint?
- When did you first contact an attorney regarding any of the injuries alleged in your complaint? (This question

asks for the first contact with any attorney, including but not limited to your present attorney).

- Since you received your M2a device, have you had any social media accounts, including but not limited to Facebook, Twitter, MySpace, and LinkedIn? If so, for each account, state the social media website, the user name(s), the associated email address(es), and the approximate date the account was created.
- ii. If a particular plaintiff has provided information and releases that would allow Biomet to acquire the documents from the plaintiff's healthcare providers, Biomet may also propound these document requests from Biomet's originally proposed Plaintiff Fact Sheet (this order doesn't preclude objections by a plaintiff or plaintiffs) for records that a plaintiff possessed:
- All medical records from any physician, hospital, or health care provider who has treated you for any injury, illness and/or disease identified in response to the Plaintiff Fact Sheet.
 - All radiographs (x-rays, ultrasounds, MRIs, CT scans) that relate to the condition and injuries alleged in your

complaint or that show any portion of your hip and/or depict the M2a device.

B. Beginning **April 2, 2018** and continuing through **June 1, 2018**, all plaintiffs whose cases are listed on Exhibit A to this order will be deposed, if such deposition has not already occurred. The depositions will be scheduled in conjunction with a plaintiff's counsel of record, who should expect to represent the plaintiff at the deposition; the PSC may, but isn't required to attend these depositions. Once the order and dates of depositions are agreed to, Biomet can't adjourn a deposition; should a plaintiff fail to attend a deposition without good cause, Federal Rule of Civil Procedure 37(d)(3) might require dismissal upon a motion by Biomet.

C. Biomet shall serve summary judgment motions in the cases listed on Exhibit A by **July 9, 2018**. The PSC (or a plaintiff's counsel of record, if the PSC agrees) shall serve responses by **August 8, 2018**. Biomet shall file its replies by **August 20, 2018**. The Court will schedule oral arguments on the motions as necessary.

2. Spoliation/Explanted Device Not Available

A. Within **30 days after the date of this order**, plaintiffs whose cases are listed on Exhibit B attached to this order will provide:

- i. Interrogatory responses corresponding to these questions from Biomet's originally proposed Plaintiff Fact Sheet (this order doesn't preclude objections by a plaintiff or plaintiffs):
- When did you first contemplate obtaining an attorney regarding any of the injuries alleged in your complaint?
 - When did you first contact an attorney regarding any of the injuries alleged in your complaint? (This question asks for the first contact with any attorney, including but not limited to your present attorney).
 - Since you received your M2a device, have you had any social media accounts, including but not limited to Facebook, Twitter, MySpace, and LinkedIn? If so, for each account, state the social media website, the user name(s), the associated email address(es), and the approximate date the account was created.
- ii. If a particular plaintiff has provided information and releases that would allow Biomet to acquire the documents from the plaintiff's healthcare providers, Biomet may also propound these document requests from Biomet's originally proposed Plaintiff Fact Sheet (this order doesn't preclude objections by a plaintiff or plaintiffs) for records that a plaintiff possessed:

- All medical records from any physician, hospital, or health care provider who has treated you for any injury, illness and/or disease identified in response to the Plaintiff Fact Sheet.
- All radiographs (x-rays, ultrasounds, MRIs, CT scans) that relate to the condition and injuries alleged in your complaint or that show any portion of your hip and/or depict the M2a device.

B. Beginning **April 2, 2018** and continuing through **June 1, 2018**, all plaintiffs whose cases are listed on Exhibit B to this order will be deposed, if such deposition has not already occurred. The PSC and Biomet will meet and confer before **March 23, 2018** about the order in which the plaintiffs whose cases are listed on Exhibit B will be deposed. The depositions will be scheduled in conjunction with a plaintiff's counsel of record, who should expect to represent the plaintiff at the deposition; the PSC may, but isn't required to attend these depositions. Once the order and dates of depositions are agreed to, Biomet can't adjourn a deposition; should a plaintiff fail to attend a deposition without good cause, Federal Rule of Civil Procedure 37(d)(3) might require dismissal upon a motion by Biomet.

C. Biomet shall serve summary judgment motions in the cases listed on Exhibit B by **August 22, 2018**. The PSC (or a plaintiff's counsel of record, if the

PSC agrees) shall serve responses by **September 21, 2018**. Biomet shall file its replies by **October 1, 2018**. The Court will schedule oral arguments on the motions as necessary.

3. Statute of Repose

A. Biomet shall serve summary judgment motions in the cases listed on Exhibit C by **April 27, 2018**. The PSC (or a plaintiff's counsel of record, if the PSC agrees) shall serve responses by **May 28, 2018**. Biomet shall file its replies by **June 7, 2018**. The Court will schedule oral arguments on the motions as necessary.

SO ORDERED.

ENTERED: March 29, 2018

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

EXHIBIT A

| No. | Plaintiff Name | Case Number | State of Residence |
|------------|-----------------------|--------------------|---------------------------|
| 1 | Beringer, Shelagh | 3:17-cv-245 | Utah |
| 2 | Draude, Karen | 3:17-cv-510 | Texas |
| 3 | Macal, Danniell | 3:14-cv-1898 | Florida |
| 4 | Ramnath, Imgard | 3:17-cv-554 | Arizona |
| 5 | Reynolds, Mary | 3:18-cv-151 | Kentucky |
| 6 | Stayanoff, Frank | 3:16-cv-271 | North Carolina |
| 7 | Smith, James | 3:17-cv-561 | Ohio |
| 8 | Boeing Co (Eklund) | 3:17-cv-639 | Washington |

EXHIBIT B

| No. | Plaintiff Name | Case Number | State of Residence |
|------------|-----------------------|--------------------|---------------------------|
| 1 | Babcock, Marshall | 3:14-cv-200 | New York |
| 2 | Bruton, Janice | 3:16-cv-135 | Nevada |
| 3 | Garrison, Evelyn | 3:15-cv-133 | Oklahoma |
| 4 | Hamilton, Karen | 3:14-cv-962 | Maryland |
| 5 | Jeffers, Walter | 3:14-cv-1965 | Florida |
| 6 | Kandel, Sidney | 3:16-cv-158 | Maryland |
| 7 | Lombardi, Rosalie | 3:16-cv-503 | New York |
| 8 | Saenz, Teodoro | 3:13-cv-1371 | Texas |

EXHIBIT C

| No. | Plaintiff Name | Case Number | State of Residence |
|------------|-----------------------|--------------------|---------------------------|
| 1 | Chapman, Jacqueline | 3:16-cv-871 | North Carolina |
| 2 | Clifford, Thomas | 3:15-cv-540 | North Carolina |
| 3 | Hughes, Van | 3:17-cv-455 | North Carolina |
| 4 | Little, Charles | 3:17-cv-507 | North Carolina |
| 5 | McGinnis, Donald | 3:17-cv-509 | North Carolina |
| 6 | Nunn, Deborah | 3:14-cv-1487 | Nebraska |
| 7 | Wise, Connie | 3:17-cv-603 | North Carolina |
| 8 | Wohleber, Edward | 3:14-cv-2002 | North Carolina |