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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

TUESDAY, NOVEMBER 12, 2019

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

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DEBRA J. BONK
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UNITED STATES DISTRICT COURT
204 SOUTH MAIN STREET - ROOM 314
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*Proceedings reported in machine shorthand. Transcript
produced by computer-aided transcription, Eclipse.*

1 TELEPHONIC APPEARANCES:

2 FOR PLAINTIFFS:

MS. BRENDA FULMER

3 MR. AHMED DIAB

4 FOR BIOMET:

MR. JOHN WINTER

5 MS. ERIN LINDER HANIG

(see docket for addresses.)

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1 **THE COURT:** Good afternoon. This is Judge Miller.
2 We are gathered for a telephonic conference in our
3 Cause Number 3:12MD2391 and MDL Cause Number or Docket
4 Number 2391, both entitled **In Re: Biomet M2A Magnum Hip**
5 **Implant Products Liability Litigation.** We converted this to a
6 telephonic conference with the agreement of all, which was
7 wiser than anybody knew at the time because we had a major snow
8 storm here.

9 If I could ask you folks to state your appearances
10 for the record.

11 **MS. FULMER:** Good afternoon, Your Honor. Brenda
12 Fulmer on behalf of the Plaintiffs.

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

14 Anyone else here for the Plaintiffs?

15 **MR. DIAB:** Good afternoon, Your Honor. Ahmed Diab on
16 behalf of the Plaintiffs.

17 **THE COURT:** Mr. Diab, welcome.

18 Anybody else on behalf of the Plaintiffs?

19 **(No response.)**

20 **THE COURT:** Okay. For the Defense?

21 **MS. HANIG:** Good afternoon, Your Honor.

22 **MR. WINTER:** Good afternoon, Your Honor. John Winter
23 for the Defendants.

24 **THE COURT:** Mr. Winter.

25 **MS. HANIG:** And Erin Hanig for Defendants, as well.

1 **THE COURT:** And Ms. Hanig.

2 I have received the proposed agenda. It's brief, and
3 I'm not aware of anything else that should have been on it so
4 it's pleasantly brief.

5 Ms. Hanig, we'd normally turn to you for the active
6 case count so I'll look in that direction telephonically.

7 **MS. HANIG:** Yes, Your Honor.

8 And I actually just touched based with the Clerk's
9 Office this morning to check the total docket on your end.
10 There are 87 total cases pending, left. Fifty-five of those
11 are unsettled. We have 32 of those in some form of resolve,
12 one way or the other. Some of those 32 have been funded. And
13 the ones where funding is actually left, we can prepare and
14 submit a proposed order to show cause for dismissals. And the
15 true pending number we have is 55.

16 **(Court reporter interrupts for clarification.)**

17 **THE COURT:** Are you saying 5-5?

18 **MS. HANIG:** 5-5, correct.

19 **THE COURT:** 5-5, okay. Thank you.

20 Ms. Fulmer or Mr. Diab, any information that suggests
21 that's off by any? It doesn't sound like it.

22 **MS. FULMER:** I need to rely on the Defendants for
23 that. We don't find out about the settlements until long after
24 they've already been completed, but I have no reason to dispute
25 that number.

1 **THE COURT:** Okay. So you can't confirm but have no
2 basis to disagree, right?

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

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

5 Ms. Hanig, I guess that's probably you to lead off,
6 again.

7 **MS. HANIG:** Sure. I can take that, Your Honor.

8 We are wrapping up 8(a) and also working through
9 Group 8(b). I don't see any issues on the horizon, other than
10 the motion to compel discovery that's pending in the **Williams**
11 case. And other than that, things seem to be moving pretty
12 smooth.

13 **THE COURT:** Okay. I would tell you that I had hoped
14 to get the **Williams** ruling out, but I hoped to have done it
15 more briefly than it turns out I can. So it's not done yet,
16 but I will have it out this week.

17 Again, Mr. Fulmer, Mr. Diab, anything to add to the
18 state of discovery? It sounds like things are moving along
19 reasonably smoothly.

20 **MS. FULMER:** Your Honor, the Plaintiff would agree
21 that things are moving along reasonably smoothly at this point.
22 We have nothing to add.

23 **THE COURT:** Okay. And remaining remands, who's got
24 that one?

25 **MS. HANIG:** I can take that one, Your Honor. This is

1 Ms. Hanig.

2 You know, we're in the same spot, I guess, as what's
3 going on in discovery. We have remand deadlines coming up for
4 us to submit lists to you for proposed cases in early January
5 and then again in March, and we anticipate being able to wrap
6 up those Group 8(a) and 8(b) cases by those two deadlines.

7 **THE COURT:** Okay. Anything to add on that for the
8 Plaintiffs' Steering Committee?

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

10 **THE COURT:** Okay. And I guess I've already touched
11 on Topic 4.

12 I'm trying to figure out what would be the best time
13 for the next conference. I don't want to have something where
14 we're just getting together just to say we got together. But
15 on the other hand, I don't want to run it so far out that
16 things would not be able to get addressed as needed.

17 Sixty days out, somewhere in the January range, would
18 put us before the objections to remand in 8(a), while discovery
19 is still alive in 8(b). Would that kind of time frame sound
20 reasonable or do you think something further down the road
21 would be justified?

22 I'll start with the Steering Committee.

23 **MS. FULMER:** Your Honor, I think that 60 days out
24 would be an appropriate time frame for us to have the next
25 status conference. And perhaps if it's a light agenda, as is

1 today, we might be able to do -- I would request that we be
2 able to do that by phone, with the plan to have a more
3 substantive conference probably in March in person.

4 **THE COURT:** Okay. And for the Defense?

5 **MR. WINTER:** Makes good sense to us, Your Honor.

6 **THE COURT:** Okay. How about 1:00 on January 11th?
7 That's a Monday. I'm just trying to stay out of the way of
8 others who might need courtrooms. I can move it on down
9 further that week, but it's more likely to have to be done by
10 phone the deeper into the week I get. So, say, 1:00 on
11 January 11th would give us a better option for in-person. Do
12 you want to go with that?

13 **MS. FULMER:** Your Honor, this is Brenda Fulmer on
14 behalf of the Plaintiffs.

15 I had actually requested that the Court consider
16 doing it by telephone. If this hearing is held on
17 January 11th, I won't be able to travel in time to appear in
18 person, but I could appear on the 11th by phone, if
19 necessary.

20 **THE COURT:** Oh, you know what; I'm looking at
21 January, 2021. Let me get a little more realistic here.

22 How about -- how about the -- I'm trying to spare you
23 having to come in the night before but still have a courtroom.
24 How about 1:00 on January 22nd? And we can convert that to
25 in-person, if necessary, I think. Would that time and date

1 work for you, to be set telephonically?

2 **MS. FULMER:** Your Honor, for the Plaintiff, I am
3 available on that date telephonically. If it is an in-person
4 conference, I'm going to ask somebody else on the Steering
5 Committee to travel to South Bend to appear. But either way,
6 it's acceptable and the Plaintiffs are available on that date.

7 **THE COURT:** Okay. And for Defense?

8 **MR. WINTER:** Works for us, Your Honor.

9 **THE COURT:** Okay. I will show it as telephonic. If
10 something arises that either any of you or I think it would be
11 better to be held in person, we'll convert and try to
12 accommodate any problems that causes.

13 Well, this is about as quick a conference as we've
14 done. Anything further for the Steering Committee this
15 afternoon?

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

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

18 **MS. HANIG:** Judge --

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

20 **MS. HANIG:** -- I do have one -- well, there's one
21 question I want to ask while I have you on the phone.

22 There's one case that I'm noting as pro se. It's
23 18cv603, **Dean Krenz**.

24 **THE COURT:** Oh, yeah.

25 **MS. HANIG:** I know that we've historically -- we've

1 historically done some orders that you've issued in the pro se
2 cases. Do you want us to submit something to you to get that
3 process rolling?

4 **THE COURT:** No. I have an order ready to go in that
5 case.

6 Back in August -- it appears that the Plaintiff is
7 deceased, both Plaintiffs are deceased -- we gave them until
8 November 6th to move for substitution of a representative.
9 That date passed, nobody's done anything, and so I would be
10 entering an order today dismissing the case without prejudice
11 under Rule 25(a)(1). I assumed that would not meet with
12 objection from Biomet.

13 Ms. Fulmer or Mr. Diab, am I correct, that would also
14 be workable for the Steering Committee?

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

16 **THE COURT:** Okay. We'll get that order in place.

17 And I'm sorry I didn't -- I had it tucked under my
18 agenda to tell you about and didn't look under my agenda.

19 Now, anything further for the Defense before we
20 break?

21 **MS. HANIG:** No, Your Honor.

22 **THE COURT:** Okay. I will talk to you all in January.
23 And thank you folks. Happy holidays between now and then.

24 **MS. FULMER:** Thank you, Your Honor.

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

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MS. HANIG: Thanks. You, too.

(Proceedings concluded.)

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 18th DAY OF NOVEMBER, 2019.

S/S DEBRA J. BONK

DEBRA J. BONK
FEDERAL CERTIFIED REALTIME REPORTER