

1 **THE COURT:** Good afternoon.

2 This is our regularly-scheduled status conference in
3 our Cause Number 3:12MD2391 and MDL Number 2391,

4 **In Re: Biomet M2a Magnum Hip Implant Products Liability**
5 **Litigation.**

6 If I could ask you to state your appearances for the
7 record, please.

8 **MS. FULMER:** Brenda Fulmer on behalf of the
9 Plaintiffs.

10 **THE COURT:** Ms. Fulmer.

11 Do you have any colleagues on the phone today?

12 **MS. FULMER:** I believe that Alex Davis is on the
13 phone from Jones Ward. I didn't hear whether Navan was able to
14 call in or not, Your Honor.

15 **THE COURT:** Okay. Do we have anybody from the
16 Steering Committee on the phone?

17 **(No response.)**

18 **THE COURT:** Must not be here yet.

19 And for the Defense?

20 **MS. HANIG:** Erin Hanig for Defendants.

21 **MR. WINTER:** John Winter for Defendants.

22 Good afternoon, Your Honor.

23 **THE COURT:** Counsel.

24 Well, I'm glad we were able to give you a taste of
25 South Bend weather for your appearance today.

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

2 **THE COURT:** We had a 9:00 change of plea this morning
3 where the Defendant arrived, coming from the northwest part of
4 the state, at 11:35, but his lawyer couldn't be here at
5 9:00 either because both of them -- no. I guess the lawyer
6 slid off the road. And then we got another call saying the
7 Defendant would be late because somebody had slid off the road
8 and traffic was all backed up. It doesn't appear to have been
9 related, but it would have been wonderful, I suppose, if it
10 had.

11 I have reviewed the status conference. I can update
12 a little when we get down to motions.

13 Ms. Hanig, I guess we start with you with the active
14 case count.

15 **MS. HANIG:** Sure, Your Honor.

16 So, we are at approximately 317 pending, and that
17 does not include the cases that went out with Remand Group 1.

18 **THE COURT:** Okay. Does that sound about right?

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

20 **THE COURT:** And discovery update?

21 **MS. HANIG:** So, for Discovery Group 6, things are
22 moving smoothly. I don't have any case-specific issues on my
23 radar that I think we need to address with you on that group.

24 And I know, for Group 7, that the order just came
25 out.

1 **THE COURT:** Uh-huh.

2 **MS. HANIG:** So, from my end, I don't think there's
3 anything specific we have to address today with the Court.

4 **THE COURT:** And Group 6, the discovery is still open
5 till the end of February or so?

6 **MS. HANIG:** Correct.

7 **THE COURT:** Sound about right to the Plaintiffs, as
8 well?

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

10 **THE COURT:** Remand procedure. I have: Group 2,
11 suggestion of remand.

12 Did you have an update?

13 We have an order ready to go, but I think the
14 deadline is November 28th.

15 **MR. WINTER:** That's correct, Your Honor.

16 **THE COURT:** There's nothing any of us can do, at this
17 point, other than flip the calendar?

18 **MR. WINTER:** I believe so, Your Honor.

19 **THE COURT:** Okay. And Group 3 List, that's due --
20 the list is due at the end of the month -- end of December, I
21 mean?

22 **MR. WINTER:** I believe it's due December 28th,
23 Your Honor, and then there's another thirty days for, you know,
24 people to chime in, one way or the other.

25 **THE COURT:** Yep.

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

2 **THE COURT:** Moving along okay on that?

3 Okay. Pending motions overview. I can tell you, on
4 the statute of repose, statute of limitations, I was very
5 hopeful, as recently as last week, that I'd have rulings for
6 you. I don't. I will. I can't pledge next week because of
7 Thanksgiving, but I will get something out to you the week
8 after that.

9 Spoliation. Three motions came ripe on October 22nd.
10 And once we get those other fifteen done, we'll turn to that.

11 We have three motions for reconsideration of
12 dismissal of the **Cuckler** Defendants. Those are in process,
13 but, frankly, we've been focusing on the repose and
14 limitations.

15 And then the numbers begin. You've got dismissal of
16 the -- is it "**Cuckler**," "**Cuckler**? Can somebody help me out? I
17 don't want to mispronounce it.

18 **MS. HANIG:** It's "**Cuckler**;" you're right.

19 **THE COURT:** "**Cuckler**."

20 -- the motion for dismissal of the **Cuckler**
21 Defendants. As I understand it, that will become ripe next
22 Monday -- no, next Wednesday.

23 And the motions to dismiss the fraud claims, eighteen
24 motions, those become ripe next Monday.

25 So you'll be happy to know, I don't have rulings for

1 you on those.

2 On the miscellaneous, I think we're caught up.

3 I granted Mr. Ward's motion to continue the **Simpson**
4 matter. I don't know if we want to try to reschedule that
5 today or just plan to do it on the heels of the next status
6 conference.

7 **MR. WINTER:** I think the next status conference, but
8 I'll confer with Mr. Ward, and we'll advise the Court.

9 **THE COURT:** Okay. **Eklund** and **Jacobs**, I have orders
10 just about done, and we'll get those out today.

11 **Sikut**, the motion to withdraw Plaintiff's counsel. I
12 did a motion yesterday or the day before, I think, deferring
13 that until November 13th.

14 And, then, **Scott**, I signed the motion to dismiss --
15 the order dismissing it this morning.

16 I'm doing that so -- while you're traveling, I'm
17 ruling on motions, and I hope you find out by the time you get
18 here.

19 **MS. HANIG:** Sorry. I don't mean to interrupt you.

20 **THE COURT:** No, that's fine. I was going to ask: Is
21 there anything else on the motions?

22 **MS. HANIG:** So, there is one on the motions. For
23 **Sikut** -- and Ms. Fulmer can represent this, as well, but we
24 talked to Plaintiff's counsel about this case. Mr. Sikut is
25 from Paradise, California, and counsel has not been able to

1 contact him since the fires. So the parties talked about this,
2 and we think that maybe it would be appropriate if the Court
3 would push it out another sixty days, on top of what you just
4 ordered, and then we can check back in and see where we're at,
5 at that point.

6 **THE COURT:** I hope there's not a bigger problem that
7 a sixty-day continuance won't happen.

8 That's agreeable with the Plaintiffs?

9 **MS. FULMER:** Yes, it is, Your Honor.

10 **THE COURT:** All right. Well, we'll get that one out
11 today, too.

12 Not a good place to be for him right now.

13 That went through the agenda very fast, for people
14 having come here today.

15 Ms. Fulmer, is there anything else, other than
16 scheduling the next status conference?

17 **MS. FULMER:** I don't believe so, Your Honor.

18 **THE COURT:** Okay.

19 **MR. WINTER:** Nothing from the Defendants, Your Honor.

20 **THE COURT:** Do you -- normally, I would be looking
21 for a date four to six weeks from now, and that hits square in
22 the holidays.

23 Do you think anything will arise or would we do just
24 as well to set the first or second week of January?

25 **MR. WINTER:** Your Honor, I think the beginning of

1 January probably makes more sense because the papers will have
2 to be filed at the end of December for that --

3 **THE COURT:** Group 3.

4 Does that sound right?

5 **MS. FULMER:** Agree with Mr. Winter, yes, Your Honor.

6 **THE COURT:** Okay. I very much hope to be fighting
7 with other judges for courtroom space by that week, so I want
8 to put you on when I already have things set.

9 How about the 9th of January at 1:30? Would that
10 work for you? Actually, 1:15. Would that work?

11 **MS. FULMER:** Hopefully, someone else on the Steering
12 Committee can cover for me, so it should be fine for the
13 Plaintiffs.

14 **THE COURT:** Okay.

15 **MR. WINTER:** That will work for Defendants,
16 Your Honor.

17 **THE COURT:** Okay. Let's go ahead and jump on. So,
18 1:15 on January 9th will be the next status conference, maybe
19 in this courtroom, maybe someplace else. Ask when you get
20 here. That's all I can promise.

21 Anything further for the Plaintiffs?

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

23 **THE COURT:** Or for the Defense?

24 **MR. WINTER:** Nothing from the Defendants, Your Honor,
25 other than have a good Thanksgiving.

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THE COURT: And to you, all of you, as well.

LAW CLERK: All rise.

(All comply; proceedings concluded.)

CERTIFICATE

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

DATED THIS 15th DAY OF NOVEMBER, 2018.

S/S DEBRA J. BONK

DEBRA J. BONK
FEDERAL CERTIFIED REALTIME REPORTER