

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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SCHEDULING ORDER

Keeping in mind the thoughts expressed in the accompanying memorandum, here is the timetable for progress of the case through five bellwether trials, if that many are needed.

1. In all cases in which an answer was filed more than 90 days before the date of this order, amendments to the pleading shall be closed 90 days from the date of this order. In all other cases, amendments to the pleading shall be closed either 90 days after the answer is filed or 90 days after the case is opened in this district.

2. To facilitate prompt resolution of discovery-related issues:

a. I will hear and resolve by telephone disputes arising during depositions that can't be resolved by agreement and that will, if not resolved immediately, significantly disrupt the discovery schedule or require a rescheduling of the deposition. If I am not available while the deposition is being taken, the dispute may be submitted to Magistrate Judge Christopher A. Nuechterlein as he might direct. The presentation of the issue and the ruling will be recorded as part of the deposition.

b. As to disputes regarding production of documents or the propriety of a particular deposition, the parties may file a joint

memorandum, not to exceed 10 pages, of the disagreements that remain after meeting and conferring about the dispute and setting forth the relief requested by each side. No further formal motion will be required, though this provision might change if either side appears to be taking positions for which Federal Rule of Civil Procedure 26 or 37 would require sanctions. If I can rule quickly without argument, I will do so. Otherwise, I will (a) arrange a telephonic hearing on the dispute within a week or so, (b) place the dispute on the agenda for the next periodic status conference, or (c) refer the dispute to Magistrate Judge Nuechterlein for prompt resolution with or without argument as he sees fit.

3. The court will resolve statute of limitations issues in six representative cases under the following schedule:

a. The PSC and Biomet will each choose three cases to serve as representative cases. Those cases must be selected from cases filed in this MDL docket by the end of 2013 and must involve either the M2a Magnum device or the M2a 38 device. Each plaintiff must have had revision surgery before 2010 and filed suit at least one or more years after August 2010. The PSC and Biomet will identify their chosen representative cases by **February 7, 2014**.

b. If the plaintiff should dismiss any of the six representative cases, Biomet may select a replacement. If any of the six representative cases is dismissed as a result of a settlement, the PSC may select a replacement.

c. Core discovery for each of the six representative cases shall be completed by **April 18, 2014**. Discovery shall be governed by the Federal Rules of Civil Procedure, the local rules of this court, and any applicable past or future orders entered in 3:12-MD-2391. Discovery shall be limited to the following:

- i. Biomet may depose the plaintiff or plaintiffs.
- ii. Biomet may propound interrogatories corresponding to questions 4, 5, and 54 of its originally proposed Plaintiff Fact Sheet (this order doesn't preclude objections by the plaintiff or plaintiffs).<sup>1</sup>
- iii. If a particular plaintiff hasn't provided information and releases that would allow Biomet to acquire the documents from the plaintiff's health care providers, Biomet may propound document requests corresponding to requests 1 and 2 of its originally proposed Plaintiff Fact Sheet (this order doesn't preclude objections by the plaintiff or plaintiffs).<sup>2</sup>
- iv. The plaintiffs in the six representative cases may seek leave of court to conduct particular case-specific discovery.

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<sup>1</sup> 4. When did you first contemplate obtaining an attorney regarding any of the injuries alleged in your Complaint?

5. 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).

54. Since you received your M2a device, have you had any social media accounts, including but not limited to Facebook, Twitter, MySpace, and LinkedIn.

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please provide the following information:

<b>Social Media Website</b>	<b>User Name(s)</b>	<b>Associated E-mail Address(es)</b>	<b>Approximate Date Account was Created</b>

<sup>2</sup> REQUEST NO. 1: 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.

REQUEST NO. 2: 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.

d. Biomet shall serve its summary judgment motions in the six representative cases on the plaintiffs by **May 2, 2014**. The court will strike any motions that seek judgment on any ground other than statutes of limitation. The plaintiffs shall serve their responses on Biomet by **May 27, 2014**. Biomet shall file the motions, responses, and its replies with the court by **June 2, 2014**.

4. By **January 3, 2014**, Biomet shall certify the production of Custodian Files for the initial 28 custodians.

5. On **January 20, 2014**, Biomet may begin taking the depositions of up to 10 plaintiffs to allow informed bellwether nominations. Biomet shall complete these depositions by **April 7, 2014**.

6. By **February 21, 2014**, the PSC shall provide an initial list of all requested deponents from the first 28 custodians, in order of priority. The PSC shall complete depositions of persons on the list of the first 28 custodians by **May 5, 2014**.

7. By **March 7, 2014**, Biomet shall (a) certify the production of Custodian Files for the additional 39 custodians identified to date, (b) complete its document production with respect to pre-2009 documents, and (c) complete its document production. The PSC shall complete depositions of persons in the list of the remaining 39 custodians by **May 12, 2014**.

8. Biomet shall provide privilege logs on a rolling basis in compliance with the court's case management orders, with the last privilege log to be served not later than **April 11, 2014**.

9. By **April 18, 2014**, the PSC and Biomet shall exchange their selections for the pool from which I will select cases for bellwether trials. Each side will submit three cases involving the M2a Magnum and two cases involving the M2a 38 in which completed Plaintiff Facts Sheets and complete medical records authorizations have been provided to Biomet by March 21, 2014. The parties may

engage in case-specific discovery relating to the ten selected cases until **July 3, 2014**. Such discovery may include depositions of (a) the plaintiffs, (b) the implanting surgeon, (c) the revising surgeon, (d) the Biomet representative who sold the product, (e) a separate Biomet representative (if any) who was present in the operating room during the implant surgery, and (f) one additional fact witness per side (if any). The parties shall meet and confer on the selection of bellwether trials by **July 11, 2014**, and inform me of their agreed selections and any proposed additional selections (with reasons for the proposed selections) by **July 18, 2014**. I will select five bellwether cases and the order of trials by **July 25, 2015**. Cases in the representative case pool may be dismissed by the plaintiff only with prejudice. In the event of dismissal or settlement of a case in the representative case pool, the PSC and Biomet each shall submit one candidate, involving the same hip model as the dismissed or settled case, to replace it; I will choose one of those candidates to schedule for a bellwether trial. I prefer not to have either side with full control over the selection of a case for bellwether trial purposes.

10. The PSC shall submit its bellwether case-specific expert reports, with deposition dates for all such experts, by **August 29, 2014**. Biomet shall submit its bellwether case-specific expert reports, with deposition dates for all such experts, by **September 26, 2014**. All bellwether expert discovery will be completed by **November 28, 2014**.

11. All summary judgment motions or motions directed at admissibility under Federal Rule of Evidence 702 shall be filed by **December 12, 2014**. Response briefs shall be filed by **January 23, 2015**, and reply briefs shall be filed by **February 3, 2015**. I will schedule a hearing on any such motions as soon thereafter as reasonable.

12. Any motions in limine in the cases selected for bellwether trials shall be filed by **February 15, 2015**. Neither side shall file more than one motion per

case, though the motions can contain multiple requests for rulings. Response briefs shall be filed by **February 25, 2015**, and reply briefs shall be filed by **March 4, 2015**. I will schedule a hearing on any such motions as soon thereafter as is reasonable, taking into account the order in which the cases are set for trial.

13. I will try to schedule the bellwether trials in the months of June, August, October, and December of 2015 and, if necessary, January 2016. The scheduling of trials will be done consistent with Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998).

SO ORDERED.

ENTERED: December 10, 2013

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