

1 **THE COURT:** Good afternoon.

2 This is our Cause Number 12MD2391, the Multi-District
3 Litigation Panel Number MDL 2391, entitled, **In Re: Biomet M2A**
4 **Magnum Hip Implant Products Liability Litigation**, and we are
5 gathered for one of our regular status conferences.

6 We have, on occasion, met beforehand in chambers just
7 so that, if there's something coming up, I don't look or sound
8 too surprised when it comes up, and we had one of those
9 discussions today.

10 It appears, as I understand it -- and I'm going to
11 try very hard not to put words in anybody's mouth because we're
12 going to have briefing, but it appears that some discussion has
13 been had about information that some Plaintiffs view as covered
14 by a supplementation obligation, Biomet believes is not covered
15 by a supplementation obligation, and which may be subject to
16 confidentiality orders in the state courts, and apparently
17 there's some issue developing as to what use might be made of
18 such information, whether Biomet has to produce such
19 information. And as I understand it from what's been raised,
20 this was, at least partly, things that have come up since
21 December of 2016 when the last discovery order showed discovery
22 having been closed then.

23 I think, at least working off the tops of our heads,
24 we all agreed that there wasn't much that could be done about
25 the cases that have already been remanded, but the Plaintiffs'

1 Steering Committee wanted to see if something could be
2 developed with respect to those yet to be remanded, and Biomet
3 believes it has no obligation of any sort and the law of the
4 case will prevent granting any relief.

5 But, in any event, what we agreed is that the
6 Steering Committee, Plaintiffs' Steering Committee, is going to
7 prepare a motion to modify the language in the remand order,
8 understanding these are remand orders that have not been
9 entered yet, but focusing on the language that has been used so
10 far and brief it as well, and they wanted two weeks to do that.

11 That takes us out to President's Day (sic), so let's
12 make it the next day, March 19th. And then Biomet wanted
13 three weeks to respond, which would be April 9th. And then
14 the Steering Committee wanted one week to reply, which would
15 take us to April 16th. And I would hope to have a ruling out
16 to you very quickly, knowing that we're -- there may not be a
17 lot of time left in the MDL.

18 I understand I did not state anybody's legal
19 position, other than a general reference, I guess, to law of
20 the case.

21 But does the Plaintiff have anything to add by way of
22 description to what we've talked about?

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

24 **THE COURT:** Or the Defense?

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

1 **THE COURT:** Okay. With that, why don't we go ahead
2 and turn to the agenda.

3 Oh, I'm sorry. I'm supposed to use that time, as
4 well, to raise things so the attorneys can think about it
5 before we come out here, and I failed to do that.

6 In January, there were two non-revision cases that
7 were discussed, **Lambdin**, L-A-M-B-D-I-N, 17cv897, and then
8 **Jacobs**, which is 19cv655, and Plaintiffs' Steering Committee, I
9 think who was Mr. Ward, was going to check with the originating
10 counsel as to whether they wanted the stay lifted to proceed
11 with discovery.

12 **Jacobs** is now in Proposed Discovery Group 8, but I
13 was curious as to whether we learned anything on the status on
14 **Lamdin**. I'm sorry for not having raised it before we came out.

15 **MR. WARD:** Yes. No problem.

16 Plaintiffs' leadership reached out to both of those
17 counsel. Of course, as you mentioned, I believe it's **Jacobs**
18 had a revision, and that is the reason why it's now properly in
19 the group that it's in.

20 Plaintiff's counsel for the other case was still in
21 the process, over the two-, three-week period, of getting in
22 contact with the Plaintiff in order to make a decision on which
23 way they would want to be able to go. I've not heard back from
24 Plaintiff's counsel, but, from what I understood, there was an
25 understanding that if the stay would be -- that the stay would

1 be lifted at some point in time in the near future.

2 **THE COURT:** Okay. Could I ask that you let us know
3 their position, I guess, by the same time, that two weeks from
4 now, that same time that brief was due?

5 **MR. WARD:** Okay.

6 **THE COURT:** So that would be the 19th.

7 And with that, then, let's turn to the agenda.

8 Ms. Hanig, Topic 1 is usually yours so I will look to
9 you.

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

11 So, in terms of what we have left as active that has
12 not yet been remanded and closed and takes out cases where
13 there are stay notices due to settlement notifications, we are
14 at 180.

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

16 I assume the Plaintiffs have no materially different
17 count?

18 **MS. FULMER:** That's correct, Your Honor.

19 **THE COURT:** The discovery update.

20 You may want to pull the microphone a little closer,
21 too. Maybe you can't.

22 **MS. HANIG:** I don't want to rip it off the table.
23 I'll just get closer.

24 So, pending case-specific Group 6 just ended.

25 Everything is complete, with the exception of the last topic

1 that we're negotiating on those motions for protective order
2 for 30(b)(6) motions in twelve cases.

3 And then Group 7 has started, and we're underway.

4 And then, I believe, we were going to do an update on
5 our position on what we foresaw as the schedule for Group 8.

6 **THE COURT:** Okay. Did you want to go ahead and
7 address that at this point?

8 **MS. HANIG:** I think Mr. Winter is going to.

9 **MR. WINTER:** No, you do it.

10 **MS. HANIG:** Well, okay.

11 So, what we discussed before we went on the record,
12 Your Honor, which is we have a proposal for Group 8. The case
13 list is in. There's one case that needs to be removed because
14 it's already been dismissed, and that's on the agenda.

15 And then we proposed doing discovery in that Group 8
16 in basically two waves of time, so the first forty and then the
17 second forty and then remanding them all at the end of the
18 conclusion of Group 8 case-specific discovery.

19 **THE COURT:** All eighty at the conclusion?

20 **MS. HANIG:** Correct.

21 **THE COURT:** Okay. And I think I remember what was
22 said back in chambers.

23 What kind of timetable for the discovery?

24 **MR. WINTER:** I think, Your Honor, we would follow the
25 same timetable that's existed for the other discovery groups,

1 with a sixty-day stagger between the first half and the second
2 half, and that the order for Group 8, for the first -- Group 8
3 would go out pretty quickly, and then thirty days for the
4 authorizations, and then seven months for discovery, with the
5 sixty-day build-in for the second half.

6 **THE COURT:** Okay. And I don't know what all has been
7 discussed. If that hasn't been discussed -- well, I guess,
8 what is the Plaintiffs' position, regardless of whether it was
9 discussed with the Plaintiffs' Steering Committee?

10 **MS. FULMER:** The Plaintiffs' Steering Committee has
11 already met and conferred with the Defense and are agreeable
12 with the proposal. The only thing I would ask is that we maybe
13 designate between those two groups so that we can keep it all
14 straight, maybe an 8A and 8B, if necessary.

15 **THE COURT:** Okay.

16 **MR. WINTER:** That's acceptable to us, Your Honor.

17 **THE COURT:** Okay. And then -- so I will, I guess,
18 watch for a proposed form of order so that I don't get it
19 wrong.

20 Ms. Hanig, you did make mention of the motion to stay
21 the briefing on the protective order motions.

22 And, again, for the record, before we came into
23 court, we talked briefly about that just to see what kind of
24 timetable we were thinking about, and I think I proposed that
25 you report to the Court by March 26th, three weeks -- I'm

1 sorry -- March 25th, three weeks from now.

2 Is that workable?

3 **MS. HANIG:** That works, Your Honor. Thank you.

4 **THE COURT:** Okay. Remaining remand procedure, is
5 that what we've already talked about out here? Was that the
6 issue that --

7 **MR. WARD:** Well, I think that, more so, Your Honor,
8 goes to the Group A and B, wrapping up the MDL case-specific
9 discovery, and then that would logically go into, I guess,
10 Remand 4 at that point in time.

11 **THE COURT:** Okay. Oh, Number 4 is that post-remand
12 discovery and coordination with state courts. That one we
13 have, I guess, discussed.

14 Pending motions overview. I do anticipate having for
15 you, this week, motions for dismissal -- rulings on the motions
16 for dismissal in the **Cuckler** defendants and the amended fraud
17 claims.

18 I do note **Nunn** is the motion to reconsider the
19 summary judgment.

20 I don't have notes on what the spoliation motions
21 are, but we ought to be able to find those. I know that's
22 usually there so I can tell you how I'm coming.

23 Is there anything you wanted to tell me, other than
24 "please rule"?

25 **MS. HANIG:** Nothing specific.

1 Just for your assistance, in the first one, the
2 motion to vacate dismissal order in **Rauber**, I know the Court
3 issued an order today, so that one is taken care of.

4 **THE COURT:** Anything that the Plaintiffs have to add
5 on that?

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

7 **THE COURT:** I think that covers everything on my
8 agenda. It seems to have -- oh, Mr. Winter.

9 **MR. WINTER:** Your Honor, conferring with Ms. Hanig, I
10 think we forgot to bring up one case that's coming up on a
11 deadline. There was a motion to withdraw in 17cv, I think,
12 518, and it was discussed, I think, at the beginning of this
13 year or the end of last year. The motion was served, and
14 unfortunately the Plaintiff lived in a part of California where
15 everyone lost contact with him, and I'm pretty sure it was
16 supposed to be revisited sometime in March.

17 **THE COURT:** I'm told it was March 13th, was going
18 to be the deadline for that.

19 **MR. WINTER:** Okay.

20 **THE COURT:** You may be ahead of the deadline.

21 Is there anything to report on that case, I remember,
22 where nobody was sure who could contact whom?

23 **MS. FULMER:** I believe that Plaintiff's counsel has
24 been in contact recently with their client, so we will follow
25 up with them to make certain that they're aware of the

1 March 13th deadline, but I believe there has been contact.

2 Although, the Plaintiff was impacted by the fire.

3 **THE COURT:** Okay. It would seem to me to be --

4 anything else that you folks want to raise?

5 It would seem to me, we would do well to get a ruling

6 from me on the remand orders before we meet again.

7 How would you look for, say, 1:00 on May 9th? I

8 prefer to do it the previous week, but I'm, right now, set for

9 a four-day criminal trial that might actually go, so let me

10 look to the next week so I don't foul up any travel

11 arrangements.

12 **MR. WARD:** May 9?

13 **MS. FULMER:** I'm available.

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

15 **MR. WARD:** Yes, that's good for the Plaintiffs,

16 Your Honor.

17 **MR. WINTER:** I will report to the Court that,

18 yesterday, I was facing ten inches of snow in New York. It

19 turned out to be rain. I think, May 9th, I won't have to

20 worry about that either, Your Honor.

21 **THE COURT:** I hope so. Although, you will be coming

22 to South Bend. Although, I guess we're the tropical place

23 today, compared to the other areas.

24 Okay. So, we will -- and, again, we'll do the

25 in-chambers at 1:00 and then 1:30 for the on-the-record, and I

1 will try not to surprise anybody this time, and I will get a
2 ruling for you as quickly as I can on the request for the
3 modification on the remand language.

4 Anything further for the Steering Committee?

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

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

7 **MR. WINTER:** No, Your Honor. Thank you.

8 **THE COURT:** Okay. Thanks, folks.

9 **LAW CLERK:** All rise.

10 **(All comply; proceedings concluded.)**

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