

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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MEMORANDUM OF FIRST CASE MANAGEMENT CONFERENCE

The first case management conference in this docket was held on November 16, 2012. John D. Winter and John D. LaDue represented the defendants; interim liaison counsel Brian Devine was present for the plaintiffs. Also appearing for one or more plaintiffs were (in order of appearance on the sign-in sheets) Daniel Burke, Lawrence Jones III, Jasper Ward, Mark Lanier, Rich Meadow, Paul Cordella, Rick Hovde, Rob Dassow, Genevieve Zimmerman, Anne Andrews, Pamela Borgess (for Michelle Kranz), Beau Darley (for Navan Ward), Joe Saunders, Stacy Hauer, Amanda Thompson (for Joseph Osborne), Larry Boyd, Mike Bollinger, John R. Climaco, Margaret Metzinger, Derriel McCorvey, Doug Kreis, Shelly Hutson, Mike McGlamry, Pete Miller, Brian Perkins (for Peter Flowers), Brian Devine, Jasper Ward, Ellen Relkin, Richard Arsenault, Thomas Anapol, and Dan Robinson. More than a dozen attorneys monitored the conference by phone.

After apologizing for scheduling the conference at the beginning of weekend in which Notre Dame has a home football game, I noted that I had written an

inconsistency into Pretrial Order #1 by directing that applications to be part of the plaintiffs' leadership structure should be submitted but not filed, and at the same time allowing time for objections by people who hadn't seen the applications. Without objection from anyone present, I said I would have the plaintiffs' submission to chambers filed with this memorandum and extend the time for objections to **November 30, 2012**. The plaintiffs' submission is attached to this memorandum.

Pro hac vice applications. I also explained that while no pro hac vice application generally is required of counsel who appeared in cases before the cases were transferred to the Northern District of Indiana, we need pro hac vice applications from all attorneys who are appointed to the plaintiffs' organizational structure for all constituent cases, as well as from any attorneys seeking to make a post-transfer appearance in a constituent case. No fee will be assessed. The form to be used in 3:12md2391 and its constituent cases is attached to this order.

Electronic service on all counsel. A request was made that all counsel of record in the MDL and its constituent cases automatically receive electronic copies of the papers through the court's CM/ECF system. I said we would do that. That process is more complicated than was thought, but I still expect we can accomplish it. I note, though, that even if we're able to achieve that on the court's end, notice will be sent only to those attorneys who have registered with the Northern District of Indiana's CM/ECF system.

Extended Time to File Answers. With the agreement of all present, I am (by this order) **extending the time to respond to the complaint**, in constituent cases in which no answer has been filed, until no earlier than January 14, 2013.

Topics Discussed. Because the plaintiffs' organizational structure isn't yet in place, general discussion overshadowed decisions of substance. I asked counsel to consider a 15- or 20-page limit on briefs, with the understanding that more pages will be allowed for *Daubert* motions, summary judgment motions, and motions of similar significance. Counsel informed the court that the number of cases ultimately to be part of this docket can't yet be estimated realistically. Counsel from both sides indicated that a tutorial for me would be helpful, but there might be some disagreement as to the timing. Counsel from both sides indicated that issues relating to FDA 522 proceedings likely will arise very soon. I explained to all present my general thinking that MDL dockets should be limited to the scope ordered by the JPMDL, and not expanded through uncontested CTOs, but would invite discussion about inclusion of M²a-38 models in this docket after the plaintiffs' organizational structure is in place. Discussion also was had concerning the potential use of bellwether trials and plaintiff-specific information sheets, with the latter topic to be discussed at the next case management conference.

Next Case Management Conference. I reported my inclination (which others are free to address) to hold case management conferences roughly every month,

alternating between telephonic conferences and in-person conferences. We scheduled the next case management conference to be held **telephonically at 1:00 p.m. (EST) on January 7, 2013**, with counsel for the plaintiffs to arrange the call.

An Omitted Statement of Gratitude. I regret that I forgot to thank interim liaison counsel Brian Devine of the firm of Seeger Salvas LLP in San Francisco for his service in that role. Because the plaintiffs' organizational structure will be in place, without him, by the next case management conference, I will not have another opportunity to thank him. It has been apparent from this first case management conference and the pre-conference submissions that he took his task very seriously and performed it very well. I thank Mr. Devine for accommodating my request that he serve as liaison counsel in an MDL docket housed three-quarters of the country away from him, and for his diligent work in that capacity.

IT IS SO ORDERED.

ENTERED: November 16, 2012

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