

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
)
)
)

This Document Relates to All Cases)

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ORDER CONCERNING PLAINTIFFS'
COUNSEL ORGANIZATIONAL STRUCTURE

A. Plaintiff's Steering Committee. I have reviewed the applications and nominations for the Plaintiffs' Steering Committee (PSC) positions that were in accordance with the procedures set forth in Pretrial Order #1, and now appoint the following members to the PSC.

- Mr. Thomas R. Anapol of Anapol Schwartz, Philadelphia, PA
- Mr. Larry P. Boyd of Fisher, Boyd, Brown & Huguenard, Houston, TX
- Ms. Anne Andrews of Andrews & Thorton, Irvine, CA
- Mr. Richard J. Arsenault of Neblett, Beard & Arsenault, Alexandria, LA
- Mr. Daniel C. Burke of Parker Waichman, Port Washington, NY
- Mr. John Climaco of Climaco, Wilcox, Peca, Tarantino & Garofoli,
Cleveland, OH
- Mr. Peter Flowers of Foote, Meyers, Mielke & Flowers, St. Charles, IL
- Ms. Stacy K. Hauer of Johnson Becker, Minneapolis, MN
- Ms. Shelly Hutson of Clark Love & Hutson, Houston, TX
- Mr. Lawrence L. Jones of Jones Ward, Louisville, KY
- Mr. W. Mark Lanier of The Lanier Law Firm, Houston, TX
- Ms. Michelle Kranz of Zoll, Kranz & Borgess, Toledo, OH

Mr. Derriel C. McCorvey of Law Office of Derriel C. McCorvey, Lafayette LA

Mr. Dougless A. Kreis of Aylstock, Witkin, Kreis & Overholtz, Pensacola, FL

Mr. Michael L. McGlamry of Pope, McGlamry, Kilpatrick, Morrison &
Norwood, Atlanta, GA

Mr. Peter A. Miller of The Miller Law Firm, Orange, VA

Mr. Joseph A. Osborne of Babbitt, Johnson, Osborne & LeClainche, West
Palm Beach, FL

Ms. Ellen Relkin of Weitz & Luxenberg, New York, NY

Mr. Daniel S. Robinson of Robinson, Calcagnie, Robinson, Newport Beach,
CA

Mr. Joseph A. Saunders of Saunders & Walker, Pinellas Park, FL

Mr. Navan Ward, Jr. of Beasley Allen Law Firm, Montgomery, AL

Ms. Genevieve M. Zimmerman of Zimmerman Reed, Minneapolis, MN

B. Plaintiffs' Executive Committee. I also appoint the following members of the PSC to serve as the Executive Committee of the PSC: Anne Andrews, Richard J. Arsenault, Peter Flowers, Dougless A. Kreis, Shelly Hutson, and Daniel S. Robinson.

C. Plaintiffs' Permanent Liaison Counsel. I also appoint Robert T. Dassow and Frederick R. Hovde of Indianapolis, IN to serve as Permanent Plaintiffs' Liaison Counsel. Pretrial Order #1 sets out their duties in that capacity.

D. Plaintiffs' Coordinating Co-Lead Counsel. I also appoint Thomas R. Anapol and W. Mark Lanier to be co-lead counsel of the PSC. Their duty, together with Plaintiffs' Liaison Counsel and after consultation with the Executive Committee, will be to coordinate the responsibilities of the Executive Committee, schedule Executive Committee meetings, keep minutes or transcripts of these meetings, appear at periodic court-noticed status conferences, perform other necessary administrative or logistic functions of the Executive Committee, and carry out any other duty as I might order.

E. Personal Nature of Appointment. The appointment to the PSC is of a personal nature. Today's appointees cannot be substituted by other attorneys, including members of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except with my prior approval. The appointment to the PSC is for one year from the date of this order. Appointees may apply to be reappointed when their term expires. If or when they reapply, their application should contain references to the nature and scope of their work on the PSC including the time and resources expended during the past term.

F. Responsibilities of Coordinating Co-Lead Counsel and the Executive Committee. The Coordinating Co-Lead Counsel and the Executive Committee will have the following responsibilities:

1. With respect to discovery, to (a) initiate, coordinate, and conduct all pretrial discovery on behalf of plaintiffs in all actions that are consolidated in this multidistrict litigation; (b) develop and propose to the court schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs; (c) cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation¹; (d) conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs; and (e) establish and maintain an electronic and/or physical document depository if deemed appropriate and necessary, in which the documents will be available, under reasonable terms and conditions for examinations by all MDL plaintiffs or their attorneys.

¹ The PSC may cause similar requests, notices, and subpoenas to be issued upon written request by the individual attorney to assist that individual attorney in the preparation of the pretrial stages of the individual attorney's particular claims.

2. With respect to hearings and meetings, to (a) call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the court; (b) initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matters pertaining to pretrial proceedings; (c) examine witnesses and introduce evidence at hearings on behalf of plaintiffs; and (d) act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject of course to the right of any plaintiff's counsel to present non-repetitive individual or different positions.

3. With respect to other matters, to (a) submit and argue any verbal or written motions presented to Magistrate Judge Nuechterlein or me on the Executive Committee's behalf as well as oppose when necessary any motions submitted by the defendants or other parties that involve matters within the sphere of the Executive Committee's responsibilities; (b) negotiate and enter into stipulations with the defendants regarding this litigation²; (c) explore, develop, and pursue all settlement options pertaining to any claim or part of any claim of any case filed in this litigation; (d) maintain adequate files of all pretrial matters; (e) conduct regular contacts (whether in person, telephonic, or electronic) with other plaintiffs' counsel to keep them informed and/or to consult with them about the conduct of the litigation; (f) employ and consult with experts; (g) perform any task necessary and proper for the Executive Committee to accomplish its responsibilities as defined by my orders, including organizing subcommittees comprised of plaintiffs' attorneys on and not on the PSC and assigning them tasks

² All stipulations entered into by the Executive Committee or the PSC, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until Magistrate Judge Nuechterlein or I have ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the court a written objection to the stipulation within five days after that attorney knows or should have reasonably become aware of the stipulation. I will deem a failure to object within the term allowed to be a waiver, and the stipulation will automatically be binding on that party.

consistent with the duties of the PSC³; and (h) perform such other functions as I might expressly authorize.

G. Defendants' Lead and Liaison Counsel. I designate Mr. John D. Winter of Patterson Belknap Webb & Tyler LLP, New York, NY to serve as defendants' Lead Counsel. I also designate Mr. John David LaDue of LaDue, Curran & Kuehn, South Bend, IN to serve as defendant's Liaison Counsel.

H. Modification of Duties. I will discuss any requested modifications to the duties and responsibilities set forth in this order at the telephonic case management conference to be held at 1:00 p.m. (EST) on January 7, 2013.

SO ORDERED.

ENTERED: December 5, 2012

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

³ Membership on these subcommittees by attorneys who are not on the PSC shall be subject to my approval.

