

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP IMPLANT PRODUCT LIABILITY LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-MD-2391-RLM-CAN
	)	Judge Robert L. Miller, Jr.
	)	This Document Relates to All Cases
	)	
	)	
	)	

**DEFENDANTS' PROPOSED SCHEDULING ORDER REGARDING  
COMPLETION OF DISCOVERY AND BELLWETHER TRIALS**

1. Document Production.

Biomet will complete its document production by **January 31, 2014**.

Biomet will certify the production of the Custodian Files for the initial twenty-eight custodians on **November 29, 2013**.

Biomet will certify the production of the Custodian Files for the additional thirty-nine custodians on **January 31, 2014**.

Biomet will continue to produce privilege logs on a rolling basis every thirty days until **March 4, 2014** pursuant to the protocol set forth in the September 9, 2013 Case Management Order No. 2: Management of Attorney-Client Privilege & Work Product Protection, Dkt. No. 835.

Plaintiffs shall provide an initial list of all requested deponents in order of priority by **December 6, 2013**. Plaintiffs will provide an updated list of requested deponents on **December 20, 2013**.

For those deponents selected from the twenty-eight initial custodians certified by November 29, 2013, Plaintiffs must complete depositions of these custodians by **February 14, 2014**. For those deponents selected from the additional thirty-nine custodians certified by January 31, 2014, Plaintiffs must complete depositions of these custodians by **March 14, 2014**.

To aid in the identification of bellwether plaintiffs, Biomet can depose up to ten plaintiffs between **December 6, 2013** and **January 24, 2014**. These plaintiffs will be deposed at locations most convenient to each plaintiff.

2. Completion of document production. Biomet will complete and certify its document production on **January 31, 2014**.

3. Deposition Locations of Biomet Fact Witnesses. Each deposition of a former employee shall take place at the location most convenient for that employee. All depositions of current Biomet employees will take place in Warsaw, IN.

4. Deposition Locations of Non-Biomet Employees. All depositions of non-Biomet employees will take place in the location most convenient for the witness.

5. Representative Case Pool. The Representative Case Pool will consist of eight total cases selected from revision cases involving the M2a Magnum or M2a 38 in which completed Plaintiff Fact Sheets and complete medical records authorizations have been provided on or before **December 13, 2013**. The Representative Case Pool will include four cases chosen by Plaintiffs and four cases chosen by Defendants. Of the four cases chosen by each side, at least three must involve an M2a Magnum revision. The Parties will exchange their selections by **January 24, 2014**. For any case from the Representative Case Pool thereafter dismissed by Plaintiffs, Defendants will select a replacement. Cases in the Representative Case Pool may only be dismissed by Plaintiffs with prejudice. For any case in the Representative Case Pool that is dismissed as a result of settlement, Plaintiffs will select a replacement.

6. Core Discovery. Core Discovery for each case selected for the Representative Case Pool shall be completed by **April 4, 2014**, with discovery in each case being governed by the Federal

Rules of Civil Procedure, the local rules of this Court, and any past or future order of this Court.

Core Discovery for each case shall be limited to the following:

- a. Defendants may depose the implanting and explanting surgeons;
- b. Defendants may depose the Plaintiffs, unless they were deposed previously;
- c. Plaintiffs may depose one sales representative associated with the sale of the product implanted in the case-specific Plaintiff;
- d. Each Party may depose one additional fact witness in addition to the above witnesses.

7. Selection of Cases for Bellwether Pool. Plaintiffs and Defendants will meet and confer by **April 11, 2014** to select four cases (three involving the M2a Magnum and one involving the M2a 38) from the Representative Case Pool for bellwether trials (collectively, the "Bellwether Pool"), as well as to negotiate the order in which they shall be tried. If the Parties are able to reach agreement, they shall inform the Court by **April 18, 2014**. If the Parties are unable to reach agreement, each Party will submit a brief on **April 18, 2014** setting out that Party's recommendation as to which four cases the Court should select for the Bellwether Pool and the order in which they should be tried. The Court will then select the four Bellwether Pool cases and establish the order in which those four cases will be tried by **April 25, 2014**. For any case from the Bellwether Pool that is dismissed by Plaintiffs, Defendants will select a replacement case that will be tried on the same date on which the dismissed case was to be tried. Cases in the Bellwether Pool may only be dismissed by Plaintiffs with prejudice. For any case in the Bellwether Pool that is dismissed as a result of settlement, Plaintiffs will select a replacement that will be tried on the same date on which the settled case was to be tried.

8. Bellwether Expert Discovery. To be completed as follows on the dates indicated below:

- a. Plaintiffs' expert reports and Fed. R. Civ. P. 26 disclosures will be submitted to Defendants, and Plaintiffs will provide deposition dates for all of their experts, by **May 23, 2014**.
  - b. Defendants' expert reports and Fed. R. Civ. P. 26 disclosures will be submitted to Plaintiffs, and Defendants will provide deposition dates for all of their experts, by **June 23, 2014**.
9. Completion of Discovery. All bellwether expert discovery will be completed by **August 8, 2014**.
10. Summary Judgment/Daubert Motions.  
Summary judgment/Daubert motions will be served on **August 22, 2014**.  
Responsive briefs will be served on **September 22, 2014**.  
Reply briefs will be served on **October 3, 2014**.
11. Venue. For bellwether trials, Defendants are willing to waive their rights to contest venue under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998); however, Plaintiffs have indicated that they will not be waiving their *Lexecon* rights. Should Plaintiffs waive their right to object to venue under *Lexecon* at a later date, all bellwether cases in this MDL will be tried in the Northern District of Indiana, without further objections. Should Plaintiffs maintain their *Lexecon* rights, bellwether cases will be tried in the jurisdictions to which the cases would be transferred pursuant to 28 U.S.C. §§ 1404 – 1412. The Parties respectfully request that Judge Miller preside over all bellwether trials, no matter the venue, and agree that they will not raise any objections to Judge Miller presiding over bellwether trials outside the Northern District of Indiana.

12. Motion Practice.

All motions *in limine* regarding the bellwether trial cases shall be filed with the Court no later than **August 29, 2014**.

All responses to *in limine* motions shall be filed no later than **September 15, 2014**.

All replies to *in limine* motions shall be filed no later than **September 25, 2014**.

13. Trial Schedule. The bellwether trials will commence on the following dates:

- i. Bellwether #1: **December 1, 2014**
- ii. Bellwether #2: **February 2, 2015**
- iii. Bellwether #3: **April 6, 2015**
- iv. Bellwether #4: **June 8, 2015**

14. Trial Orders. Each bellwether court will issue a trial order setting forth the preparation of a pretrial order, identification of fact and expert witnesses, exchange of exhibits and deposition designations, and any other matters that the court wishes to be addressed.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Hon. Robert L. Miller, Jr., U.S.D.J.