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April 24, 2015

U.S. District Court  
Judge Miller's Chambers  
SOUTH BEND, INDIANA

*Via Federal Express*

The Honorable Robert L. Miller, U.S.D.J.  
United States District Court  
for the Northern District of Indiana  
204 South Main Street  
South Bend, IN 46601

**Re: Biomet M2a Magnum Products Liability Litigation (MDL-2391)  
Cause No. 3:12-MD-2391-RLM-CAN**

Dear Judge Miller:

My firm represents a plaintiff in the Biomet MDL who sought enhancement of Biomet's offer under the settlement agreement via a mediation, but the mediation never occurred and my client was unable to resolve her case with Biomet.

I write to request that the Court direct the current plaintiffs' MDL leadership to examine and report on the issue whether Biomet fulfilled its obligations in carrying out the terms of the Master Settlement Agreement, particularly as it relates to those cases where plaintiffs sought enhancement through mediation.

**A. Background**

My client sought to mediate an enhancement of her award category under the settlement agreement. We were advised by plaintiffs' leadership that Biomet would contact us to schedule a mediation. However, we were never contacted by Biomet to schedule a mediation.

As the deadline for conducting mediations approached, I contacted Biomet's counsel. I was advised that I would receive the same offer from Biomet via telephone discussions as I would in a mediation. When I spoke to plaintiffs' leadership, I learned that Biomet had challenged every one of the cases where a plaintiff sought an enhancement, that relatively few mediations had taken place, that the mediator had been unable to influence Biomet's

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settlement positions in the mediations that had occurred, and that virtually no enhancements had resulted from the mediations or enhancement discussions that had occurred. I was also led to understand that many or perhaps substantially all of those plaintiffs seeking enhancements had been offered substantially less than the amounts they were initially scheduled to receive under the settlement agreement.

In my own discussions with Biomet, my client was offered a small fraction of the \$200,000 she had originally been categorized to receive under the settlement agreement.

I communicated to plaintiffs' leadership my concerns about Biomet's fulfillment of its obligations under the settlement agreement, but was advised that plaintiffs' leadership did not intend to pursue the issue as they would be resigning their leadership positions.

**B. The Current PEC and PSC Should Examine and Report on the Issue Whether Biomet Fulfilled Its Obligations Under the Settlement Agreement with Respect to Assertion of Challenges and the Mediation Process Under the Settlement Agreement**

The settlement agreement provides in part:

(b) Contested Cases. Biomet also believes that there is good cause to reduce the amount to be paid on cases that qualify for payments, pursuant to Paragraph 2 of this Settlement Agreement. Good cause for Biomet to seek to reduce the amount to be paid to a specific plaintiff, include, but are not limited to, evidence of trauma, infection or other objective explanations for a premature failure of the hip system with the absence of evidence of a MoM injury.

The fact that Biomet contested every case where a plaintiff sought an enhancement, that few mediations took place, and that (I am advised) virtually no plaintiff received an enhancement, but rather plaintiffs received offers substantially less than originally categorized, strongly suggests that Biomet's assertion of good cause challenges and its resulting mediation tactics were not consistent with its obligations under the settlement agreement, including its obligation of good faith and fair dealing.

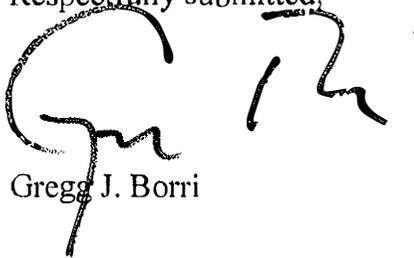
The current leadership for plaintiffs in the MDL should examine and report on this issue (and pursue relief if appropriate) because current leadership negotiated, administered and participated in the settlement process, and is the only group that has the information necessary to examine and report on this matter.

The Honorable Robert L. Miller, Jr., U.S.D.J.

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Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by 'J. Borri'. The signature is written in a cursive, somewhat slanted style.

Gregg J. Borri

GJB

cc: Thomas Anapol, Esq. (by email)  
John Winter, Esq. (by email)